# TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1912.

No. 103.

PITTSBURG STEEL COMPANY, PLAINTIFF IN ERROR,

vs.

BALTIMORE EQUITABLE SOCIETY.

IN ERROR TO THE COURT OF APPEALS OF THE STATE OF MARYLAND.

FILED JULY 14, 1913.

(22,258)

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INDEX.



JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., JULY 18, 1912.

1 & 2 In the Court of Appeals of Maryland. January Term, 1910.

At a Court of Appeals of the State of Maryland, Begun and Held for the said State, at the City of Annapolis, on the Second Monday of January, Being the Tenth Day of the Same Month, in the Year of Our Lord One Thousand Nine Hundred and Ten, and in the One Hundred and Thirty-fourth Year of the Independence of the United States of America.

Present:

Chief Judge: A. Hunter Boyd.

Judges: John P. Briscoe, James A. Pearce, Samuel D. Schmucker, N. Charles Burke, William H. Thomas, John R. Pattison, Hammond Urner.

CALEB C. MAGRUDER, *Clerk*.

Among other, were the following proceedings, to wit:

3 *Transcript of Record.*

"Appeal from the Superior Court of Baltimore City.

Action Commenced on the 26th Day of February, 1908.

*Declaration.*

(Filed Feb. 26, 1908.)

The Pittsburg Steel Company, a body corporate of the State of Pennsylvania, by J. Kemp Bartlett and L. B. Keene Claggett, its attorneys, sues The Baltimore Equitable Society, a body corporate of the State of Maryland, Defendant.

For money payable by the Defendant to the Plaintiff.

1. For goods bargained and sold by the Plaintiff to the Defendant.

2. And for work done and materials provided by the Plaintiff for the Defendant at its request.

3. And for money lent by the Plaintiff to the Defendant.

4. And for money paid by the Plaintiff for the Defendant, at its request.

5. And for money received by the Defendant for the use of the Plaintiff.

6. And for money found to be due from the Defendant to the Plaintiff, on accounts stated between them.

7. And for that the said Plaintiff is a creditor of The South Baltimore Steel Car and Foundry Company, a body corporate of the State of Maryland, in the sum of Four thousand and twenty one dollars and fifty-nine cents, ($4021.59), and that the said Defendant is, and has been during all of the time that the said Plaintiff has been a creditor of said Company, an original stockholder of said Company, and as such is, and has been during all of said period, the owner

4 and holder of sixty (60) shares of preferred capital stock of the par value of one hundred dollars ($100.00) per share,

and thirty (30) shares of common capital stock of the par value of one hundred dollars ($100.00) per share, of the said The South Baltimore Steel Car and Foundry Company, upon which there is a balance due of Three thousand dollars, ($3000.00), said capital stock so, as aforesaid, held and owned by the said Defendant, having a par value of Three thousand dollars, ($3000.00) in excess of all sums paid by the said Defendant or by any one for or on account of the said Defendant to the said Company for said shares.

And the Plaintiff claims Six thousand dollars, ($6000.00).

J. KEMP BARTLETT,
L. B. KEENE CLAGGETT,
*Attorneys for Plaintiff.*

*Accounts.*

Baltimore Equitable Society, Stockholder in the South Baltimore Steel Car and Foundry Company, to Pittsburg Steel Company, a creditor of said South Baltimore Steel Car and Foundry Company, Dr.

For amount of unpaid balance due on shares of the capital stock of the said South Baltimore Steel Car and Foundry Company issued to said Baltimore Equitable Society as follows:

Under action of stockholders taken November 18th, 1905.

| | | | |
|---|---|---|---|
| 60 shares of preferred stock par | $6000 | paid | $3600 |
| 24 shares of common stock par | 2400 | paid | 2400 |
| 6 shares of common sometimes called "Trust" or "Patent" stock | 600 | paid | nothing |
| Aggregate par value | $9000 | | |
| Amount paid | 6000 | | |
| Unpaid balance due | $3000 | | |

5 PITTSBURG, PA., *Nov.* 8, '07.

South Baltimore Steel Car & Foundry Co., Baltimore, Md., in Account with Pittsburg Steel Company, Frick Building.

*Terms.*

| | | | |
|---|---|---|---|
| Aug. 5 | 60 | | 281.45 |
| 5 | 60 | | 392.50 |
| 10 | 60 | | 636.71 |
| 10 | 60 | | 22.29 |
| 21 | 60 | | 1204.85 |
| 21 | 60 | | 627.71 |
| 21 | 60 | | 119.55 |
| Sept. 14 | 60 | | 89.23 |
| 14 | 60 | | 621.71 |
| 14 | 60 | | 25.59 |
| | | | 4021.59 |

Accounts not paid when due bear interest at the rate of 6% per annum, from date of maturity.

Attached to the declaration is an affidavit under Act 1886 ch. 184, and also an Election for a Jury trial.

*Pleas and Demurrer.*

(Filed March 23, 1908.)

The Defendant, The Baltimore Equitable Society for Insuring Houses from Loss by Fire, by Gans & Haman, and Wilton Snowden, Junior, its Attorneys, says:

For a first plea to the first six counts of the plaintiff's declaration, that it was never indebted as alleged:

And for a second plea to the first six counts of the plaintiff's declaration, the defendant says that it never promised as
6 alleged. And the defendant further says that the seventh count of the plaintiff's declaration is bad in substance.

GANS & HAMAN,
WILTON SNOWDEN, JR.,
*Att'ys for Def't.*

Issue joined short on demurrer.

Attached to the pleas is an affidavit under Act 1886, ch. 184.

*Motion to Abate and Dismiss the Suit.*

(Filed Sept. 15, 1909.)

To the Honorable the Judge of said Court:

The defendant, The Baltimore Equitable Society for Insuring Houses from Loss by Fire, by Gans & Haman, and Wilton Snowden, Jr., its attorneys, respectfully moves the Court that the above entitled suit be declared by the Court to be abated and dismissed and that judgment be entered for the defendant for the following reasons:—

That this suit is a suit by a creditor of a corporation to enforce the liability of one of the stockholders therein, and that Chapter 305 of the Acts of 1908, of the General Assembly of Maryland provides that the exclusive remedy for the enforcement of such rights shall be by bill in equity, and that said law, by its terms, became operative as of July 1st, 1907, and further declares that it shall cause the abatement of all actions at law which shall have been brought against stockholders since that date, and that this suit was brought subsequent to July 1st, 1907, and should therefore, be declared abated.

Wherefore, the defendant prays judgment in its favor.

GANS & HAMAN,
WILTON SNOWDEN, JR.,
*Att'ys for Def'nd't.*

*Docket Entry.*

16 October, 1909.—Motion to abate granted. Opinion of Court filed.

7 *Opinion of Court.*

(Filed October 16, 1909.)

This case comes before the Court on demurrer to the 7th count of the nar. and a motion to abate the suit. In support of this motion reliance is placed on the provisions of Chapter 305 of the Acts of 1908. In opposition to this the plaintiff urges the supposed unconstitutionality of the Act of 1908. By the Act thus called in question the General Assembly undertook to substitute for the right of a creditor to proceed against individual stockholders for any sums due by them upon their subscription to the stock of an insolvent corporation, a proceeding in equity by way of a general creditors' bill or by the Receiver for such corporation, if one had been appointed. The Act then provided not merely that it should apply to cases arising thereafter, but that it should take effect as of July 1, 1907, nine months prior to its passage, and that all suits which had been instituted during that period should abate, and the present case is one of the suits brought during that period. This Act is practically the same, with a single exception, as the Act of 1904, Chap. 337 relating to the double liability of stockholders in trust, loan, guarantee and fidelity companies.

The constitutionality of the Act of 1904 was called in question and upheld in the case of the Bank vs. Snyder, 100 Md. 58. The decision in this case was rendered on Nov. 30, 1904, and on the same day, a directly contrary conclusion was reached by the District Court of the U. S. in the case of the Knickerbocker Trust Co. vs. Myers, 133 Fed. Rep. 764, and this holding was affirmed on appeal by the Circuit Court of the U. S., Judge Gray delivering the opinion, 139 U. S. Ill., decided June 19, 1905. While the same precise point was not involved in Murphy v. Wheatley, 102 Md. 513 & 520, decided Jan. 6, 1906, our own Court of Appeals cites with approval the decision in the Bank vs. Snyder, supra.

The principle upon which the decision in the Bank vs. Snyder rests, is the familiar one that the legislature may change a remedy provided it affords to those to be affected thereby an equally efficacious one. If this was a case of first impression I should be inclined to hold that the new remedy was not equally effective with the former. Thus it might happen that the diligent creditor had by attachment secured a lien upon property amply sufficient to pay him in full, while under a general creditors' bill he would realize but a small percentage on his claim; but this Court must necessarily be governed by the law as declared by our own Courts.

8 Reference has been made to the fact of one point of difference between the Acts of 1904 and 1908. That has reference to the application of the Statute of limitations to the period between

the institution of a suit and the abatement of the same. By the Act of 1904 this was carefully guarded, and preserved to the creditor his rights by expressly excluding that interval in the computation of time for determining the running of the Statute. In the Act of 1908, this same interval is expressly included. In a case where the statute of limitations could be invoked as a defense, this would be a serious curtailment of the rights of the creditor. If the pleadings in the case at bar made it appear that such would be the effect as to this plaintiff, it would be the duty of the Court to hold the statute inapplicable to him upon the principle of construction adopted in Garrison vs. Hill, 81 Md. 551. But there is nothing in the pleadings in this case to suggest such a result, or to show that the plaintiff will in any way be affected in this respect by giving the Statute effect, and the motion to abate will therefore be granted.

HENRY STOCKBRIDGE.

*Docket Entry.*

16 October, 1909.—Suit abated. Judgment for defendant for costs.

*Order for Appeal.*

(Filed October 16, 1909.)

Mr. Clerk:

Enter an Appeal to the Court of Appeals on behalf of the Pittsburg Steel Company, Plaintiff.

J. KEMP BARTLETT,
L. B. KEENE CLAGGETT,
*Attorneys for Plaintiff.*

| | |
|---|---|
| Appellant's Costs | $15.15 |
| Appellee's Costs | $6.60 |

9 STATE OF MARYLAND,
*City of Baltimore, set:*

I, Stephen C. Little, Clerk of the Superior Court of Baltimore City, do hereby certify that the foregoing is truly taken from the record and proceedings of the said Superior Court in the therein entitled cause.

In testimony whereof, I hereunto set my hand and affix the seal of the Superior Court of Baltimore City, this 21st day of October, in the year one thousand nine hundred and nine.

[SEAL'S PLACE.] STEPHEN C. LITTLE,
*Clerk Superior Court of Baltimore City.*"

10 (Endorsed on back:) "Transcript of record from the Superior Court of Baltimore City. In the case of Pittsburg Steel Company, a body corporate, vs. Baltimore Equitable Society, a body corporate. To the Court of Appeals of Maryland, Appeal to January Term, 1910. J. Kemp Bartlett, L. B. Keene, Claggett, For Appellant. Gans & Haman, Wilton Snowden, Jr., For Appellee." Filed October 23rd 1909.

11 *Opinion of the Court of Appeals of Maryland.*

"This appeal raises the issue of the constitutionality of Chap. 305 of the Acts of 1908, which abated pending actions at law to enforce a stockholder's liability to the creditors of a corporation and substituted therefor a creditors' bill in equity.

The present suit was instituted in the Superior Court of Baltimore City on February 21st 1908 by the appellant as a creditor against the appellee as a stockholder of the South Baltimore Steel Car and Foundry Company. The declaration contains six common counts in assumpsit, and one special count alleging that the plaintiff is a creditor of the company in the sum of $4021.59 and that at the time he became such creditor the defendant held stock in the company to the par value of $9000, on the subscription for which a balance of $3000 remained due and unpaid. The plaintiff claimed the right to recover that unpaid balance.

The defendant filed general issue pleas to the first six counts and demurred to the seventh. Before any further proceedings were had in the case, the Act of 1908 Chap. 305 was passed. That Act by repealing and re-enacting sec. 64 of Art. 23 of the Code of 1888 and adding sec. 64A, made a bill in equity the exclusive remedy for the enforcement by creditors of corporations of the liability to
12 them of the stockholders for any unpaid balances due on their stock. The Act further provided that it should become operative as of July 1st 1907, and that all actions at law for the enforcement of such liability instituted after that date and prior to the passage of the Act should be abated.

Then the defendant in reliance upon the Act moved in the Court below to abate the suit. The Court granted the motion and entered judgment of dismissal in favor of the defendant and the plaintiff appealed.

The appellant contends that the retrospective provision of the Act abating actions at law, to enforce the liability of stockholders, begun since July 1st 1907 is in violation of sec. 10 of Art. I of the Federal Constitution forbidding any State to pass a law impairing the obligation of contracts. The law is well settled that the right of the creditor to recover against the stockholder is one founded on a contract which the law conclusively presumes to exist between those parties. In Brandt vs. Ehlen, 59 Md. 27 our predecessors said "All of the decisions in this country agree that the right of the creditor to recover against the stockholder rests on the liability of the latter to the corporation and that this liability is one founded on contract." See also Norris vs. Wrenchall, 34 Md. 501-2, Matthews vs. Albert, 24 Md. 535, Hager vs. Cleveland, 36 Md. 492, Garling vs.
13 Bechtel, 41 Md. 325, Celton vs. Mayer, 90 Md. 717, Coulbourn vs. Boulton, 100 Md. 354, Crawford vs. Gohrer, 50 Md. 605, Norris vs. Johnson, 34 Md. 489.

The law as to the extent to which an existing remedy for the enforcement of the obligation of a contract is to be considered as part of the contract itself, and the character of a subsequent change in

such remedy which will operate to impair the contract, is well stated in Seibert vs. Lewis, 122 U. S. 294 cited and relied on in the appellant's brief. In the opinion in that case the Supreme Court say "It is well settled by the decisions of this Court that the remedy subsisting in a State when and where the contract is made, and is to be performed, is a part of its obligation, and any subsequent law of the State which so affects that remedy as substantially to impair and lessen the value of the contract is forbidden by the Constitution, and is therefore void. It had been previously said, upon a review of the decisions of the Court in Von Hoffman vs. City of Quincy, 4 Wallace, 535, 553: 'It is competent for the States to change the form of the remedy or to modify it otherwise, as they may see fit; provided no substantial right secured by the contract is thereby impaired. No attempt has been made to fix definitely the line between alterations of the remedy which are to be deemed legitimate and those
14 which, under the form of modifying the remedy, impair substantial rights. Every case must be determined upon its own circumstances. Whenever the result last mentioned is produced the Act is within the prohibition of the Constitution, and to that extent void.'"

The doctrine is most strongly stated in Bryan vs. Virginia, 135 U. S. 693 as follows: "It is well settled by the adjudications of this Court that the obligation of a contract is impaired in the sense of the constitution by any Act which prevents its enforcement or which materially abridges the remedy for enforcing it which existed at the time it was contracted and does not supply an alternative remedy equally adequate and efficacious."

In order to apply the test, thus laid down, to the Act under consideration it is essential to determine what was the remedy, for the enforcement of the stockholders' liability to which the creditor was entitled before the passage of the Act and what was the new remedy which it provided for him. It is conceded that before the passage of the Act any creditor could sue at law any stockholder who was such at the time the debt was contracted and recover from him to the extent of the balance due on his stock subscription or he could enforce his claim by a bill in equity. Norris vs. Johnson, supra, Crawford vs. Rohrer, supra. The right of the creditor to thus sue at law
15 was not a separate or exclusive one of his own which could be satisfied only by payment to him individually. It was a mere right held by him in common with all other creditors of the corporation to whom the stockholder was liable, and one which the stockholder could satisfy and destroy by payment to any other or others of such creditors. The right therefore of the creditor under such circumstances to bring a separate suit at law for an obligation which the debtor might satisfy by payment to a stranger to the suit was not a very valuable right. It was in a certain sense an individual right of action but it bore only a slight resemblance to the right of a creditor to maintain a suit against his own debtor to recover an obligation due to no one else than himself. If, as we have decided in Matthews vs. Albert, supra the stockholder is to be regarded as a "debtor under the statute to the creditors of the cor-

poration" who became such while he was a stockholder then he, being under the obligation of a debtor to all of them, must have had the correlative right to discharge his obligation by payment to any of them and have been free to select the one to whom to make the payment. We held in Garling vs. Bechtel, supra, that the extent of the stockholder's liability was limited to the par value of his stock less such sums as he had paid on account thereof to the corporation or had been compelled to pay to others of its creditors.

16 Now what remedy did the Act substitute for the uncertain one to which we have referred? The Act recognized and maintained the obligation of the stockholder to the creditors to its fullest extent but merely required its enforcement by a bill in equity on behalf of all of the creditors against all stockholders resident in the State and thus secured to each creditor an equal opportunity to certainly recover an equitable proportion of the liability of all of the stockholders. If the change in the form of remedy thus made by the Act deprived the creditor of an existing remedy it certainly furnished him with an alternative one equally adequate and efficacious. The separate right of action at law existing in the creditor against the stockholder before the passage of the Act, although having had the appearance of a reliable and efficient remedy, has been found upon close scrutiny to have been, in practice, a precarious and uncertain one. The remedy supplied by the Act is a more adequate and efficacious one. The Act protects the creditor, whose suit at law has been abated by its operation, from loss of the costs thereof by providing that they shall be taxable in the proceedings in equity.

We had occasion to pass upon the constitutionality of a statute having a precisely similar operation to the one now before us in the case of The Miners Bank vs. Snyder, 100 Md. 57, and held it

17 to be valid. The Act of 1904 Ch. 337 there considered related to suits against stockholders of banks or trust companies. It also took away the separate right of action at law theretofore existing in the creditor against the stockholder and provided that a bill in equity similar to the one prescribed by the Act of 1908 should be the exclusive remedy. The Act of 1904 like the present one was by its terms made operative from a date anterior to its passage and directed the abatement of suits at law brought subsequent to that date.

In that case will be found a full discussion of the questions involved in the present issue with an examination of the authorities bearing on them and we therefore do not repeat the discussion here.

Our attention has been called to the fact that a conclusion different from our own, in reference to the exact questions presented in Miners Bank vs. Snyder, was reached by the U. S. Circuit Court for the Middle District of Pennsylvania in the case of the Knickerbocker Trust Co. vs. Myers, 133 F. R. 764, which was affirmed on appeal by the U. S. Circuit Court of Appeals for the Third Circuit in 139 F. R. 111.

We have examined those cases and, yielding to the Courts by which they were decided the respect due to their high position and recognized ability, we are unable to accept as correct the conclusions

at which they have arrived. In our judgment the learned
18 authors of the opinions in those cases have overestimated the adequacy and value of the right, to sue the stockholder at law, enjoyed by the creditor before the passage of the Act.

Judge Archbold, in the opinion in the Circuit Court, when alluding to the race of diligence open to the creditors in their actions at law against the stockholder, uses the expression "the first to sue being entitled to the whole until paid." Judge Gray in the opinion in the Circuit Court of Appeals speaks of the right of the creditor suing at law having become "exclusive of every other creditor as to the particular defendant."

Neither the Act of 1904 Chap. 337 in issue in the Miners Bank case nor the Act of 1908 Chap. 305 in issue here give to the creditor suing the stockholder at law any lien or priority, by reason of having brought suit, upon the debt due by the defendant stockholder to the corporation. Nor does the entry of suit by one creditor exclude the other creditors from suing the same stockholder and recovering the entire debt due by him if they can secure earlier judgments. It is the recovery of judgment not the entry of suit that gives to the suing creditor the exclusive right to the debt due by the defendant stockholder. In Garling vs. Bechtel, supra, it was held that the mere bringing of suit by one creditor against a stockholder does not constitute a defense to a suit by another creditor.

19 The laws creating the liability of the stockholder, which were in force at the time of the passage of the Acts making the remedy in equity exclusive, were silent as to the remedy. The practice of enforcing the liability by an action at law grew up under the decisions of this Court which held the liability to be a debt due under the statute by the stockholder and therefore recoverable at law.

The act also contains a provision touching the running of limitations against the claims of creditors which had been sued on at law prior to its passage, but as it does not appear from the record that the rights of the appellant are affected thereby he cannot be heard to raise the question of its constitutionality. A. & E. Encyc Vol. 6, p. 1090, 8 Cyc. 787-8, Red River Valley Bank vs. Craig, 181 U. S. 558, Lampasas vs. Bell, 180 U. S. 283-4, Phinney vs. Sheppard & Enoch Pratt Hospital, 88 Md. 639, Joesting vs. Baltimore, 97 Md. 594.

We do not think that Chapter 240 of the Acts of 1908 affects the status of the present suit or the rights of the parties to it. That Act, as its title declares, was passed to revise the corporation laws of the State by repealing certain specified sections of Art. 23 of the Code and substituting new sections in their stead. By it secs. 1 to 92 of Art. 23 are among those repealed for which new sections num-
20 bered from 1 to 79 inclusive are substituted. The new sections make some changes in the nature and extent of the liability of the stockholders of a corporation to its creditors but sec. 79 distinctly saves all existing rights and remedies of creditors and stockholders as of June 1st 1908 in comprehensive terms. It says "Nothing herein shall release, affect or impair the rights of any cred-

itor or creditors of any corporation or the obligations or liability of any corporation or of any stockholder or of any corporate officer existing on the said first day of June in the year nineteen hundred and eight (1908) or the remedies to enforce or protect the same."

Chapter 240 of the Acts of 1908 did not take effect until June 1st 1908 but Chapter 305 by its express terms took effect from the date of its passage. It was approved by the Governor on April 6th 1908 and was therefore in operation prior to June 1st 1908 and the rights and remedies conferred by it on creditors of corporations against their stockholders were within the saving clause of sec. 79 of Chapter 240.

For the reasons which we have stated in this opinion the judgment appealed from must be affirmed.

Judgment affirmed with costs."

21 (Endorsed on back:) "The Pittsburg Steel Company, vs. The Baltimore Equitable Society. All Judges present. Opinion by Schmucker, J. To be reported." Filed March 31st 1910.

Whereupon the following judgment was entered to wit:

1910, March 31st.—Judgment affirmed, with costs.

*Petition for Writ of Error to the Supreme Court of the United States.*

In the Court of Appeals of Maryland.

No. —.

"Pittsburg Steel Company, a Body Corporate, Plaintiff in Error,
*vs.*
Baltimore Equitable Society, a Body Corporate, Defendant in Error.

Petition for Writ of Error.

Now comes the Pittsburg Steel Company, a body corporate,
22 plaintiff in error, and shows that on the 31st day of March, 1910, this Court entered judgment herein in favor of the defendant in error against the plaintiff in error; and the plaintiff in error avers that in the judgment and in the proceedings had prior thereto, certain errors were committed, to the prejudice of this plaintiff in error, and against the right, privilege and immunity claimed to exist by virtue of certain Acts of Congress and authority exercised under the United States, all of which will more fully appear by the assignment of errors which is filed herewith.

Wherefore, plaintiff in error prays that a writ of error may be allowed to the Supreme Court of the United States for the correction of the errors complained of, and that a transcript of the record, proceed-

ings and papers in this cause, duly authenticated, may be sent to the Supreme Court of the United States.

BARTLETT, CLAGGETT & BLAND,
*Attorneys for Plaintiff in Error.*"

Whereupon the Court passed the following order to wit:

"Writ of error allowed and penalty of bond fixed at one thousand dollars.

June 7th 1910.

A. HUNTER BOYD,
*Chief Judge Court of Appeals of Maryland.*"

Filed June 27th 1910.

23 *Writ of Error.*

In the Court of Appeals of Maryland.

"PITTSBURG STEEL COMPANY, a Body Corporate, Plaintiff in Error,
vs.
BALTIMORE EQUITABLE SOCIETY, a Body Corporate, Defendant in Error.

Writ of Error.

UNITED STATES OF AMERICA, *ss:*

The President of the United States of America to the Honorable the Judges of the Court of Appeals of the State of Maryland, Greeting:

Because in the record and proceedings as also in the rendition of the judgment of a plea which is in the said Court before you, or some of you, being the highest court of law or equity of the said State in which a decision could be had in the said suit between the Pittsburg Steel Company, Plaintiff in Error, and the Baltimore Equitable Society, Defendant in Error, wherein was drawn in question the validity of a treaty or statute of, or an authority exercised under, the United States, and the decision was against their validity; or wherein was drawn in question the validity of a statute of,

24 or an authority exercised under, said State, on the ground of their being repugnant to the Constitution, treaties, or laws of the United States, and *and* the decision was in favor of such their validity; or wherein was drawn in question the construction of a clause of the Constitution, or of a treaty, or statute of, or commission held under the United States, and the decision was against the title, right, privilege, or exemption specially set up and claimed under such clause of the said Constitution, treaty, statute, or commission; a manifest error hath happened, to the great damage of the said Pittsburg Steel Company, as by their complaint appears. We being willing that error, if any hath been, should be duly corrected, and

fully and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same in the said Supreme Court at Washington, within 30 days from the date hereof, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right, and according to the laws and customs of the United States, should be done.

Witness the Honorable Melville W. Fuller Chief Justice of the United States, the 27th day of June, in the year of our Lord
25 one thousand nine hundred and ten.

[Seal's Place.]

ARTHUR L. SPAMER,
*Clerk Circuit Court United States for the District of Maryland.*

Allowed by:

A. HUNTER BOYD,
*Chief Judge Court of Appeals of Maryland.*

26 *Assignment of Errors.*

In the Court of Appeals of Maryland.

"PITTSBURG STEEL COMPANY, a Body Corporate, Plaintiff in Error,
vs.
BALTIMORE EQUITABLE SOCIETY, a Body Corporate, Defendant in Error.

Assignment of Errors.

Now comes the Pittsburg Steel Company, a body corporate, plaintiff in error, and respectfully submits in support of its petition for a writ of error, this, its assignment of the errors appearing in the record herein:

1. The Court of Appeals of the State of Maryland erred in affirming the judgment of the Superior Court of Baltimore City, State of Maryland.

2. The Court of Appeals of the State of Maryland erred in failing and refusing to reverse the judgment of the Superior Court of Baltimore City, State of Maryland.

3. The Court of Appeals of the State of Maryland erred in holding and deciding that Chapter 305 of the laws of the State of
27 Maryland, passed at the General Assembly of 1908, does not violate Section 10, Article 1 of the Federal Constitution, which provides that no State shall pass any law impairing the obligation of contracts.

4. The Court of Appeals of the State of Maryland erred in holding and deciding that Chapter 305 of the Laws of the State of Mary-

land, passed at the General Assembly of 1908, does not impair the contractual rights of the Pittsburg Steel Company, a body corporate, the plaintiff in error, against the Baltimore Equitable Society, a body corporate, defendant in error.

For which errors the plaintiff in error prays that the said judgment of the Court of Appeals of the State of Maryland dated the 31st day of March, 1910, be reversed and a judgment rendered in favor of said plaintiff in error and for costs.

BARTLETT, CLAGGETT & BLAND,
*Attorneys for Plaintiff in Error.*"

Filed June 27th 1910.

*Citation and Acknowledgment of Service.*

THE UNITED STATES OF AMERICA, *ss:*

The President of the United States to the Baltimore Equitable Society, a body corporate, Greeting:

You are hereby cited and admonished to be and appear at
28 and before the Supreme Court of the United States at Washington, D. C., within thirty days from date hereof, pursuant to a writ of error filed in the office of the Clerk of the Court of Appeals of the State of Maryland, wherein the Pittsburg Steel Company, a body corporate, is plaintiff in error and you are defendant in error, to show cause, if any there be, why the judgment rendered against the said plaintiff in error, as in said writ of error mentioned, should not be corrected, and why speedy justice should not be done the parties in that behalf.

Witness, the Chief Judge of the Court of Appeals of the State of Maryland, this 7th day of June, 1910.

A. HUNTER BOYD,
*Chief Judge Court of Appeals of Maryland.*"

"We, the attorneys of record for the defendant in error, in the above entitled case, hereby acknowledge due service of the above citation, and enter an appearance in the Supreme Court of the United States.

GANS & HAMAN,
*Attorneys for Defendant in Error.*"

29 *Bond.*

Know all men by these presents, That we, the Pittsburg Steel Company, a body corporate, as principal, and the United States Fidelity and Guaranty Company, a body corporate, as surety, are held and firmly bound unto the Baltimore Equitable Society, a body corporate, in the sum of One thousand dollars ($1,000.00) to be paid to it, the said Baltimore Equitable Society, a body corporate, to which payment well and truly to be made, we bind ourselves, our successors, jointly and severally, firmly by these presents.

Sealed with our seals and dated this 31st day of May, 1910.

And whereas the above named plaintiff in error seeks to prosecute its writ of error to the United States Supreme Court to reverse the judgment rendered in the above entitled action by the Court of Appeals of the State of Maryland in favor of the said Baltimore Equitable Society, a body corporate, and against the said Pittsburg Steel Company, a body corporate, and to supersede the said judgment rendered therein.

Now, therefore, the condition of this obligation is such that if the above named plaintiff in error shall prosecute its said writ of error to effect and answer all costs and damages that may be adjudged against it if it shall fail to make good its plea, then this obligation to be void, otherwise to remain in full force and effect.

PITTSBURG STEEL COMPANY.

[Seal's Place of Pittsburgh Steel Co.]

By W. H. ROWE, *President, Principal.*

C. E. BEESON, *Secretary.*

UNITED STATES FIDELITY AND GUARANTY COMPANY.

[Seal's Place of United States Fidelity and Guaranty Co.]

By RICHD D. LANG, *Vice President, Surety.*

ALBERT H. BUCK, *Secretary.*

Which said bond is thus endorsed, to wit:
"Bond approved this 7th day of June, 1910.

A. HUNTER BOYD,
*Chief Judge Court of Appeals of Maryland.*"

Filed June 27th 1910.

*Appellant's Costs in the Court of Appeals of Maryland.*

| | |
|---|---|
| Record | $13.50 |
| Brief | 55.00 |
| Clerk | 1.05 |
| Appearance fee | 10.00 |
| | $79.55 |

31 *Appellee's Costs in the Court of Appeals of Maryland.*

| | |
|---|---|
| Brief | $12.00 |
| Clerk | 1.45 |
| Appearance fee | 10.00 |
| | $23.45 |

STATE OF MARYLAND, *ss:*

I, Caleb C. Magruder, Clerk of the Court of Appeals of Maryland, do hereby certify that the aforegoing is a true and correct copy of the transcript of record, opinion, and judgment of the Court entered thereon, together with the petition for writ of error, with allowance endorsed thereon, writ of error, with allowance endorsed thereon, assignment of errors, the citation with proof of service endorsed thereon and bond to the adverse party with the approval of the Hon. A. Hunter Boyd, Chief Judge of the said Court, endorsed thereon; all of which papers are now on file in the said court, in the case of Pittsburg Steel Company, a body corporate, versus Baltimore Equitable Society, a body corporate.

In Testimony Whereof, I hereunto subscribe my name and the seal of the Court of Appeals affix, this fifth day of July, A. D., nineteen hundred and ten.

[Seal Court of Appeals, Maryland.]

CALEB C. MAGRUDER,
*Clerk of the Court of Appeals of Maryland.*

Cost of transcript $10.00.

Endorsed on cover: File No. 22,258. Maryland Court of Appeals. Term No. 103. Pittsburg Steel Company, plaintiff in error, vs. Baltimore Equitable Society. Filed July 14th, 1910. File No. 22,258.

17

SUPREME COURT, U. S.
FILED.
DEC 18 1912
JAMES H. McKENNEY
CLERK

IN THE

# Supreme Court of the United States

OCTOBER TERM, 1912. No. 103.

PITTSBURG STEEL COMPANY,
A Body Corporate,
*Plaintiff in Error,*

vs.

BALTIMORE EQUITABLE SOCIETY,
A Body Corporate,
*Defendant in Error*

In Error to the Court of Appeals of the State of Maryland.

## BRIEF ON BEHALF OF PLAINTIFF IN ERROR.

J. KEMP BARTLETT,
EDGAR ALLAN POE,
L. B. KEENE CLAGGETT,
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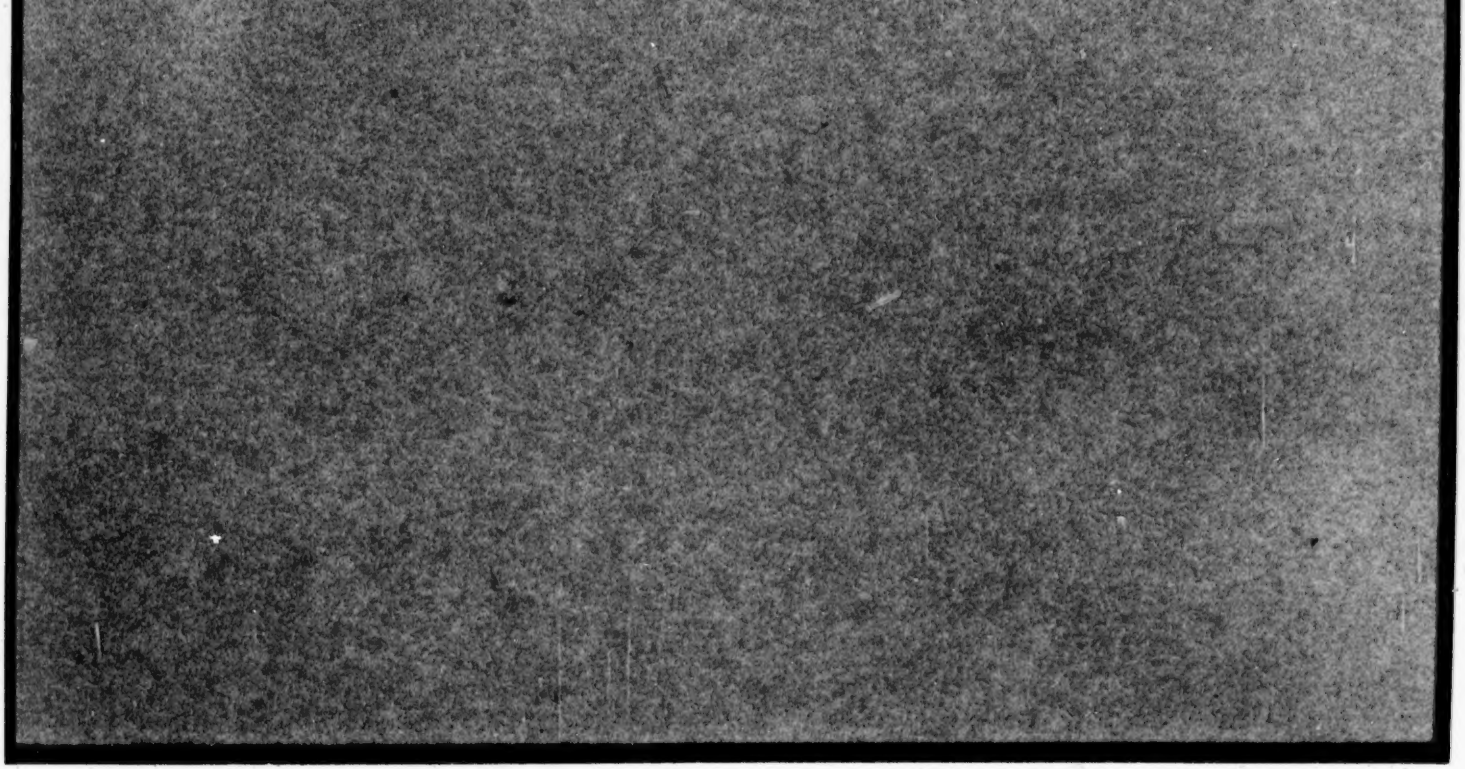
KING BROS., PRINTERS, 413 E. Lexington Street, Baltimore, Md.



IN THE

# Supreme Court of the United States

OCTOBER TERM, 1912. No. 103.

PITTSBURG STEEL COMPANY,
A Body Corporate,
*Plaintiff in Error,*

*vs.*

BALTIMORE EQUITABLE SOCIETY,
A Body Corporate,
*Defendant in Error*

**In Error to the Court of Appeals of the State of Maryland.**

## BRIEF ON BEHALF OF PLAINTIFF IN ERROR.

### STATEMENT.

This case arises under a writ of error directed to the Court of Appeals of the State of Maryland.

On February 26, 1908, the plaintiff in error, a creditor of the South Baltimore Steel Car and Foundry Company, an

insolvent Maryland corporation, at that time in the hands of receivers, instituted suit in the Superior Court of Baltimore City against the defendant in error, a stockholder of the said South Baltimore Steel Car and Foundry Company.

The declaration contained six counts of assumpsit and one special count in which it was alleged that the plaintiff in error was a creditor of the insolvent corporation in the sum of four thousand and twenty-one dollars and fifty-nine cents ($4,021.59) and that at the time it became such creditor the defendant in error held stock in said insolvent company of the par value of nine thousand dollars ($9,000), on the subscription for which stock there was a balance of $3,000 remaining due and unpaid. The plaintiff in error claimed the right to recover from the defendant in error that unpaid balance. The defendant in error filed general issue pleas to the first six counts and demurred to the seventh (Record, pages 1, 2 and 3).

Before any further proceedings were had in the case, the Legislature of the State of Maryland passed an act known as Chapter 305 of the Acts of 1908, the Act itself becoming effective April 6, 1908. The essential parts of that Act are as follows:

> "64. All the stockholders of any such corporation shall be severally and individually liable to the creditors of the corporation of which they are stockholders to an amount equal to the amount of stock held by them respectively, for all debts and contracts made by the corporation, until the whole amount of the capital stock fixed and limited by the corporation shall have been paid in, and a certificate thereof made and filed as prescribed in the following section, which certificate may, however, be filed at any time after thirty days mentioned in said section, but no stockholder shall be individually liable to the creditors of such corporation except to the amount of his, her or their unpaid sub-

scriptions to the capital stock; and the liability of such stockholder shall be an asset of the corporation for the benefit ratably of all the creditors of such corporation, if necessary, to pay the debts of such corporation, and shall be enforceable only by appropriate proceedings by such corporation or by a receiver, assignee or trustee of such corporation, acting under the orders of a Court of competent jurisdiction; provided, however, that this section shall not affect the rights of any creditor under the existing laws of this State against the stockholders who were liable to such creditors at the date of the passage of this Act. * * *

64 A. The exclusive remedy for the enforcement by creditors against stockholders of all rights existing under the preceding Section 64, as the same stood prior to the time of the passage of this Act, and which were declared by said section as amended by this Act not to be affected by the terms thereof as herein amended shall be, as against stockholders residing in the State of Maryland, by bill in equity in the nature of a creditor's bill filed against such stockholders by one or more creditors on behalf of themselves and all other creditors of the corporation who may come in and make themselves parties thereto, in a Court having jurisdiction within the limits of the county or city of Baltimore, in which, as the case may be, the principal office of the corporation is situated at the time of the filing of the bill, or in case any such corporation has, by reason of having been placed in the hands of a receiver, or from any other cause, ceased to have any principal office at the time of the filing of the bill, then the bill shall be filed in a Court having jurisdiction within the limits of the county or the city of Baltimore in which, as the case may be, the said corporation had its last principal place of business; and to any such bill stockholders

residing beyond the limits of the State of Maryland may become parties defendant, and upon so becoming parties shall not be proceeded against in any other State or Territory or in the District of Columbia, in respect of any liability imposed by the said Section 64, as said section stood before the repeal thereof, and which existed at the time of the passage of this Act hereinbefore referred to. This section shall become operative as of July 1, 1907, and shall cause the abatement of all actions at law which shall have been brought against said stockholders since that date to enforce any liability created by Section 64, as said section stood before the repeal thereof, and which existed at the time of the passage of this act, hereinbefore referred to; provided, however, that as to any plaintiff or plaintiffs in any of such abated suits, who shall, within sixty days from the passage of this Act, become a party or parties to a bill in equity of the character mentioned in this section, then, as regards the operation of the Statute of Limitations upon the claims so sued on, the time elapsed between the institution of said abated suits and the time of such plaintiff or plaintiffs becoming a party or parties to said bill in equity, shall be included in ascertaining the period within which suits are required to be brought by the said Statute of Limitations, the costs taxable to any plaintiff or plaintiffs in any action at law which shall be abated under the provisions of this section, the plaintiff or plaintiffs in which action shall become a party or parties to a bill in equity under the provisions of this section, shall become a part of the costs taxable in the proceedings in said equity case.

Section 2. *And be it enacted*, That this Act shall take effect from the date of its passage.

Approved April 6, 1908."

The Act repealed and reenacted Section 64 of Article 23 of the Code of Public General Laws of Maryland of 1888, and added a new Section known as Section 64 A, which provided that the exclusive remedy for the enforcement by creditors of corporations of the liability to them of the stockholders for any unpaid balances due on their stock should be by bill in equity in the nature of a creditor's bill against such stockholders residing in the State of Maryland.

The Act further provided that it should become operative as of July 1, 1907 and that all actions at law for the enforcement of such liability instituted after that date and prior to the passage of the Act should be abated.

Subsequent to the passage of said Act and in reliance thereupon, the defendant in error moved the Superior Court to declare the suit abated and to dismiss the same (Record, page 3) and on October 16, 1909 the Court granted the motion and entered judgment for the defendant for costs (Record, pages 4 and 5).

The plaintiff in error then appealed to the Court of Appeals, but the appeal was unsuccessful, the Court of Appeals of Maryland affirming the judgment of the lower Court (Record, page 10).

The correctness of the judgment of the Court of Appeals is now before this Court upon writ of error. The assignment of error that will be relied upon is as follows:

> "The Court of Appeals of the State of Maryland erred in holding and deciding that Chapter 305 of the Laws of the State of Maryland, passed by the General Assembly of 1908 does not violate Section 10, Article 1 of the Federal Constitution which provides that no State shall pass any law impairing the obligation of contracts" (Record, page 12).

## ARGUMENT.

**Chapter 305 of the Acts of the General Assembly of Maryland of 1908, especially paragraph 64 A thereof impaired the obligation of the contract existing between the Plaintiff in Error and the Defendant in Error on the 6th day of April, 1908, the date when said Act became effective, and is therefore unconstitutional, being in contravention of Section 10 of Article 1 of the Constitution of the United States.**

At the time of the passage of this Act, as already shown, the plaintiff in error, a creditor of the South Baltimore Steel Car & Foundry Company, an insolvent Maryland corporation, had actually brought suit against the defendant in error, a stockholder of said insolvent corporation, indebted to said corporation on account of an unpaid balance due upon its stock subscription.

At the time of the passage of this Act it was the settled law in Maryland that any creditor of a corporation could sue at law any stockholder thereof who was such at the time the debt was contracted, and recover from him to the extent of the balance due on his stock subscription, for his, the creditor's sole and exclusive benefit, or he could enforce his claim by a bill in equity. Pittsburg Steel Co. vs. Balto. Equitable Society, 113 Md. 81. The plaintiff in error, therefore, had actually made his election between the two courses open to him and had a solvent debtor actually in Court, and assuming the facts alleged in the declaration to be true, in due course would have recovered a judgment against the defendant in error, the amount of which judgment could be applied only in satisfaction of the claim of the plaintiff in error.

By the express provisions of Chapter 305, this suit and all advantages accruing to the plaintiff in error therefrom abated, and the plaintiff in error was left to the sole and

exclusive remedy of a proceeding in equity in the nature of a creditor's bill, wherein the amount due by the defendant in error on his stock subscription would not be applicable solely to the claim of the plaintiff in error, but would be apportioned ratably among the plaintiff in error and other creditors of the insolvent corporation who became such creditors while the defendant in error was a stockholder. This change in remedies would certainly seem at first blush to be a most drastic and radical one and clearly in violation of Section 10 of Article 1 of the Federal Constitution. The Court of Appeals of Maryland, however, held differently, basing its conclusion on the following line of reasoning: True, a creditor of a Maryland corporation prior to the passage of Chapter 305 could sue at law any stockholder who was such at the time the debt was contracted and recover from him to the extent of the balance due on his stock subscription, or he could enforce his claim by a bill in equity, but after all, the right of the creditor to thus sue at law was in reality very precarious, unsubstantial, unreal and of but little value, because this right of the creditor was not a separate or exclusive one of his own which could be satisfied only by payment to him individually. It was a mere right held by him in common with all other creditors of the corporation to whom the stockholder was liable and one which the stockholder could satisfy and destroy by payment to any other or others of such creditors. It was in a certain sense an individual right of action but it bore only a slight resemblance to the right of a creditor to maintain a suit against his own debtor to recover an obligation due to no one else than himself, because the stockholder is a debtor to all the creditors of the corporation who became such while he was a stockholder, and, therefore, being under the obligation of a debtor to all, had the right to discharge his obligation by payment to any, and was free to select the one to whom to make payment, and the extent of his liability was limited to

the par value of his stock less such sums as he had paid on account thereof to the corporation or had been compelled to pay to others of its creditors. The creditor suing the stockholder at law did not have any lien or priority by reason of having brought suit upon the debt due by the defendant stockholder to the corporation. Nor did the entry of suit by one creditor exclude the other creditors from suing the same stockholder and recovering the entire debt due by him if they could secure earlier judgments. It was the recovery of the judgment, not the entry of the suit that gave to the suing creditor the exclusive right to the debt due by the defendant stockholder.

Pittsburg Steel Co. vs. Baltimore Equitable Society, 113 Md. 81-84.

Assuming as we are bound to assume, that the Maryland Court of Appeals has correctly interpreted the extent of the rights and obligations existing between a creditor and stockholder of a Maryland corporation, we respectfully insist that the Maryland Court erred in reaching the conclusion that the rights of the plaintiff in error as above defined, were of so little value that the Legislature of Maryland could take them away entirely without substituting anything in their place.

It is to be noted that prior to the passage of Chapter 305, a creditor of a Maryland corporation had the choice of two remedies against a stockholder whose subscription was unpaid in whole or in part; he could either proceed at law, as the plaintiff in error did in this case, or he could proceed by bill in equity in the nature of a creditor's bill.

Steel Company vs. Equitable Society, *supra.*
Mathews vs. Albert, 24 Md. 527.
Norris vs. Johnson, 34 Md. 485.

Under the terms of said Chapter 305 there was left him, however, merely the proceeding in equity in the nature of a creditor's bill, the right to proceed at law being entirely destroyed. It is not a case, therefore, as erroneously claimed by the Maryland Court of Appeals, of the substitution of one remedy for another, but of the entire elimination of the more valuable of one of two remedies. The Maryland Court of Appeals reached the conclusion that the remedy supplied by the Act in controversy was a more adequate and efficacious one than the one taken away.

This conclusion we claim is erroneous and is of course subject to review by this Honorable Court.

This same Act was before the Circuit Court for the District of Maryland in the case of Republic Iron & Steel Company vs. Carlton, 189 Fed. Rep. 126, and His Honor, Judge Rose following the reasoning and ruling of the Maryland Court of Appeals, upheld it. A practically similar Act, however, of the Legislature of Maryland of 1904, known as Chapter 337 of the Acts of 1904 was before the Circuit Court of the United States for the Middle District of Pennsylvania and was stricken down by that Court as being in violation of Section 10 of Article 1 of the Federal Constitution, and the judgment of the Circuit Court was affirmed by the Circuit Court of Appeals, Third Circuit. Myers vs. Knickerbocker Trust Co., 139 Fed. Rep. 111.

This Court has frequently had occasion to consider the question of what amounts to an impairment of the obligation of a contract under Section 10 of Article 1 of the Constitution of the United States. We herewith quote extracts from some of the cases :

> "The obligation of a contract consists in its binding force on the party who makes it. This depends on the laws in existence when it is made; these are necessarily referred to in all contracts and form a part of them as the measure of the obligation to perform them

by the one party, and the right acquired by the other. If any subsequent law affect or diminish the duty, or impair the right, it necessarily bears upon the obligation of the contract in favor of the one party to the injury of the other; hence, any law which in its operation amounts to a denial or obstruction of the rights accruing by a contract, though professing to act only on the remedy, is directly obnoxious to the prohibition of the Constitution."

McCracken vs. Hayward, 2 How. 608 at 611.

"It is well settled by the decisions of this Court that the remedy subsisting in a State when and where the contract is made, and is to be performed, is a part of its obligation, and any subsequent law of the State which so affects that remedy as substantially to impair and lessen the value of the contract is forbidden by the Constitution, and is therefore void. It has been previously said, upon a review of the decisions of the Court in Von Hoffman vs. City of Quincy, 4 Wallace, 535, 553: 'It is competent for the States to change the form of the remedy or to modify it otherwise, as they may see fit; provided no substantial right secured by the contract is thereby impaired. No attempt has been made to fix definitely the line between alterations of the remedy which are to be deemed legitimate and those which, under the form of modifying the remedy, impair substantial rights. Every case must be determined upon its own circumstances. Whenever the result last mentioned is produced the Act is within the prohibition of the Constitution, and to that extent void.'"

Seibert vs. Lewis, 122 U. S. 284, at 294.

"The obligation of a contract, in the Constitutional sense, is the means provided by law by which it can be enforced; by which parties can be obliged to perform

it. Whatever legislation lessens the efficacy of these means impairs the obligation. If it tends to postpone or retard the enforcement of a contract, the obligation of the latter is to that extent weakened."

Louisiana vs. New Orleans, 102 U. S. 203 at 206.

"It is well settled by the adjudications of this Court, that the obligation of a contract is impaired in the sense of the Constitution by any Act which prevents its enforcement, *or which materially abridges the remedy for enforcing it*, which existed at the time it was contracted and does not supply an alternative remedy *equally adequate and efficacious*." (Italics are ours.)

Bryan vs. Virginia, 135 U. S. 685, at 693.

"The remedy subsisting in a State when and where a contract is made, and is to be performed, is a part of its obligation; and any subsequent law of the State, which so affects that remedy as substantially to impair and lessen the value of the contract, is forbidden by the Constitution of the United States, and, therefore, void."

Edwards vs. Kearzey, 96 U. S. 595.

"The remedies for the collection of a debt are essential parts of the contract of indebtedness, and those in existence at the time it is incurred must be substantially preserved to the creditor. * * * All the laws in existence when the contract is made are necessarily referred to in and form part of the essence of the obligation of the one party and of the right acquired by the other."

Rees vs. City of Watertown, 19 Wallace, 107.

In Dexter vs. Edmonds, 89 Fed. Rep. 467 at 469, it was said:

> "Now, the difference between a right vested in all creditors to proceed in one action against all stockholders, and a right vested in each individual creditor to proceed against any individual stockholder, is more than a difference between two remedies; it is a difference between two substantive rights."

The constitution and statutes of the State of Kansas impose upon stockholders of Kansas corporations a liability in favor of creditors of such corporations to the extent of the amount of stock held, in addition to any unpaid balance due thereon. A stockholder of one of these corporations residing in New Jersey was sued at law by a creditor of the corporation. The Supreme Court of Kansas had declared that this liability was contractural and not penal. A statute of New Jersey passed after the debt sued upon was contracted, provided as follows:

> "No action or proceeding shall be maintained in any Court of law in this State against any stockholder, of any domestic or foreign corporation by or on behalf of any creditor of such corporation to enforce any statutory personal liability of such stockholder, for or upon any debt, default or obligation of such corporation, whether such statutory personal liability be deemed penal or contractural, if such statutory personal liability be created by or arise from the statutes or laws of any other State or foreign country, and no pending or future action or proceeding to enforce any such statutory personal liability shall be maintained in any Court of this State other than in the nature of an equitable accounting for the proportionate benefit of all parties interested."

It was held upon this state of facts, remarkably similar to the facts in the case at bar, that:

> "If the obligation of a contract may be said to 'reside in its legal enforceability' then it would seem that the legislation of a State, though not the place of the contract, which destroys the right to the transitory action for its enforcement which previously existed, would impair its obligation, and so be within the inhibition of the Constitution of the United States * * * The Constitution is not localized. It pervades all the States, like an atmosphere, and it withers and destroys all legislation inconsistent with its provisions * * * Nor do we think that the Act of 1897, which forbids the maintenance of an action at law in behalf of an individual creditor against an individual stockholder, but apparently sanctions a proceeding in the nature of an accounting in equity in which all the creditors of the foreign corporation and all the stockholders should be necessary parties, merely changes the form of the remedy theretofore existing, without destroying the substantial right of action which the plaintiff had for the enforcement of its contract."

The above extract which we have made from Dexter vs. Edmonds, *supra*, is then quoted with approval, and the opinion closes with a reference to a decision, not reported, of the Chief Justice of New Jersey, in the case of Western National Bank vs. Skillman, in which the learned Chief Justice in refusing a non-suit, based upon the same statute says:

> "I think that this Act both takes away the obligation of the contract, because it deprives the party of a mode of suing, which, under my construction, he had, and also * * * it deprives a man of a remedy that he had when the contract was made."

Western Nat. Bank vs. Reckless, 96 Fed. Rep. 70.

Let us consider the case at bar in the light of the language used in the above quotations.

Does Chapter 305 either tend to postpone or retard the enforcement of the contract between the plaintiff in error and the defendant in error, or materially abridge the remedy for enforcing it, which existed at the time the contract sprang into existence, or fail to supply an alternative remedy equally adequate and efficacious? If it does, then the Act should be stricken down. We say that it actually postpones and retards the enforcement of the contract, materially abridges the remedy for enforcing it, and fails to supply an alternative remedy equally adequate and efficacious.

In the opinion of the Maryland Court of Appeals it is stated that after all there is no advantage to a creditor in being the first to sue a stockholder whose stock subscription is unpaid in whole or in part because forsooth someone else might also sue him later on and might succeed in getting a prior judgment by confession or otherwise, or because forsooth the defendant might take it into his head to pay the balance of his subscription to the corporation or its receiver.

As a matter of fact, however, experience in Maryland for the last forty years has shown that the one who sues first is the one who gets the judgment first, and this is so because it has been expressly held by the Court of Appeals in Norris vs. Wrenschall, 34 Md. 492, and Coulbourn vs. Boulton, 100 Md. 350, that such a suit comes under the Speedy Judgment Act, whereby a plaintiff by swearing to his claim, secures a judgment within fifteen days after the return day unless the defendant files proper pleas in the meantime, supported by affidavit denying the debt, accompanied also by a certificate of counsel to the effect that he has advised the defendant to make the affidavit and to file the pleas. If, therefore, there is no dispute about the debt judgment goes as a matter of course. If there is a dispute about the debt, then there is no reasonable probability of the defendant making any volun-

tary payments, either to other creditors or to the corporation or its receiver and the advantage of being the first to sue is most apparent. It is also a most significant fact that since 1871, when it was decided by the Court of Appeals of Maryland that the individual liability of a stockholder for debts due by the Company could be enforced in an action at law against such stockholder by one creditor, even where others are shown to exist, there is no recorded case in the Maryland Reports where the creditor or creditors have resorted to a proceeding in equity to enforce the statutory liability of stockholders, although the Reports contain a number of cases where resort was had to a Court of law. The reason therefor is very aptly and succinctly stated by Judge Miller in his opinion in Norris vs. Johnson, *supra*, at pages 490 and 491 where the following language is used:

> "Both policy and convenience require that the creditor should have this right (the right to proceed at law), for in the case of small debts the proceeding for an account in equity would be so tedious and expensive as to destroy the value of the remedy.
>
> In Massachusetts the line of decisions is different, and it is there held that the creditor is confined to his remedy in equity. In favor of that doctrine it is said the remedy in equity is more beneficent in its operation, and will work less hardship on parties liable as stockholders than an action at law, that it compels the party seeking to enforce the liability to join in the suit all the parties in interest who can be affected by the decree; that it avoids multiplicity of suits, apportions the liability amongst all stockholders, and in the same suit which charges them, decrees contribution from each of his respective share of the general burden; whereas by an action at law each creditor may pursue his separate remedy against an individual stockholder, compel him

to pay the entire debt and place on him the burden of obtaining contribution from those equally liable with himself. Harris vs. First Parrish, 23 Pick. 112; Erickson vs. Nesmith, 15 Gray, 221. This reasoning seems to us to proceed upon the assumption that it is the duty of the Courts in determining where relief shall be had, to consult the interest and convenience of the stockholders exclusively, rather than to afford a speedy and efficient remedy to the creditors. But the law was not enacted in the interest or for the benefit of stockholders. It imposes a liability upon them for the security and protection of creditors, and if the burden and delay of a chancery suit is to be incurred by any one, why throw it upon those for whose protection the provision was made, and who trusted the corporation, relying upon this personal responsibility of its stockholders? They become stockholders in these corporations voluntarily, and risk their money in them for expected gain to themselves, and with full knowledge of the nature and extent of the liability, the law says they shall assume in so doing. In this way credit is given to the corporation that contracts the debts, and when debts are thus contracted we see no objection to permitting any creditor to seek out any responsible stockholder and sue him at law for the debt, and place on him the burden of proceeding in equity to obtain contribution from others equally liable with himself. The creditors, as amongst themselves, may here as in other cases, be well left to a race of diligence in the recovery of their claims, especially when the extent of recovery as against any one stockholder is limited, and he can show that that limit has been reached as a defense to any further suits. It is true he may be thus compelled to pay more than his share looking to the like responsibility of other stockholders, but for this he has his remedy in equity

for contribution. There is no injustice in holding it is for him to seek this mode of relief, when it is considered the law has provided that all this personal liability may be avoided by paying up the capital stock at the time of subscription and formation of the corporation, or before any debts are contracted. In our opinion the weight of reason as well as authority is in favor of sustaining the action, and this judgment must therefore be affirmed."

So also in Colton vs. Mayer, 90 Md. 716, where the court, in discussing the right of the receiver of an insolvent corporation to enforce a statutory liability of share holders said:

> "Thus we see that the liability of the stockholders is only to those who became creditors while the former held the stock, and those creditors can relieve them of all such responsibility when the debts are contracted. One stockholder might be liable to one creditor, another to some other creditor, and the creditors may have released others. It would therefore be very difficult, if not impossible, in some cases to properly determine, in the distribution of the estate, how the funds collected from the various stockholders should be distributed, and it might require many accounts to be stated. Those authorities and others to the same effect not only show how inconvenient and inequitable it would be to permit the receivers to recover, but go very far towards showing that they are not the proper parties to sue on the liability imposed by a statute, such as the one now under consideration."

It appears, therefore, that in 1871 and again in 1900, the Court of Appeals of Maryland expressly held that the proceeding by bill in equity was by no means as adequate and

efficacious as a suit at law. It is difficult to understand how what was true in 1871 and 1900, and in intervening years as well as in subsequent years is not also true now.

We also call the Court's attention to the latter part of Section 64 A of Chapter 305, which actually reduces the period of limitations as against all creditors who had brought suit against stockholders between the 1st day of July, 1907, and the 6th day of April, 1908. This provision is certainly unconstitutional and vitiates the entire section. It is obvious that a creditor whose claim would have been barred by the Statute of Limitations had he waited until April 6, 1908, the date of the passage of the Act in question, before suing, but who prevented the bar of the statute from attaching by suing in February, 1908, is deprived of every right he had against stockholders by this retroactive statute. This extraordinary and unjust, as well as illegal provision is upheld by the Court of Appeals in Steel Company vs. Equitable Society, *supra*, in ten lines as follows:

> "The Act also contains a provision touching the running of limitations against all claims of creditors which had been sued on at law prior to its passage, but as it does not appear from the record that the rights of the appellants are affected thereby, he cannot be heard to raise the question of its constitutionality."

American & English Enc. Vol. 6, p. 1090.
8 Cyc. 787-8.
Red River Valley Bank vs. Craig, 181 U. S. 558.
Lampasas vs. Bell, 180 U. S. 283-4.
Phinney vs. Shepherd & Enoch Pratt Hospital, 88 Md. 639.
Joesting vs. Baltimore, 97 Md. 594.

It is submitted that the constitutionality of this particular provision of Chapter 305 is not to be determined by ascertaining whether or not the claim of the plaintiff in error

would have become barred during the interval in question. The law was not directed against the plaintiff in error alone, but against a class of creditors to which it belonged. This class, embraces all creditors of insolvent Maryland corporations whose stockholders have not paid what they agreed to pay for their shares, and as was said in Ulman vs. Baltimore, 72 Md., page 596, "the constitutional validity of a law is to be tested not by what has been done under it, but by what may under its authority be done." An examination of the cases of the Supreme Court of the United States cited by the Maryland Court of Appeals will show that the rule established by them is that one who belongs to the class to which the statute applies can raise any and all questions affecting its validity.

We respectfully submit, therefore, that the judgment of the Court of Appeals of Maryland should be reversed.

J. KEMP BARTLETT,
EDGAR ALLAN POE,
L. B. KEENE CLAGGETT,
R. HOWARD BLAND,
*Attorneys for Plaintiff in Error.*

14

# Supreme Court of the United States

October Term, 1912.

No. 108.

Supreme Court
FILED
NOV 14 19
JAMES H. McKE

PITTSBURGH STEEL COMPANY,
*Plaintiff in Error,*

vs.

BALTIMORE EQUITABLE SOCIETY,
*Defendant in Error.*

## Brief on Behalf of Baltimore Equitable Society, Defendant in Error.

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King Bros., Printers, 412 E. Lexington St., Baltimore, Md.

# Supreme Court of the United States

October Term, 1912. No. 103.

PITTSBURG STEEL CO. vs. BALTIMORE EQUITABLE SOCIETY.

ERRATA IN BRIEF FILED ON BEHALF OF
BALTIMORE EQUITABLE SOCIETY, *Defendant in Error.*

Page 3. At second line from bottom, insert after word "follows" "Section."

Page 4. On first line, substitute "repeal" for "appeal."

Page 13. At middle of page, line 18 from top, substitute "a" for "the."

Page 17. At sixth line from top, after "Maryland," insert "of 1908."

Page 21. At tenth line from top, substitute "him" for "them."

Page 23. At thirteenth line from bottom, "compell" should read "compel."

Page 29. The third line from bottom should commence with quotation marks.

Page 30. At third line from bottom, after the word "stands," insert "Cooley, 'Constitutional Limitations,' 7th edition, page 516." Also, the first case cited thereafter should read "Bank vs. Dudley."

Page 31. At seventh line from top, substitute "1912" for "1812."

# Supreme Court of the United States

OCTOBER TERM, 1912.

*No. 103.*

PITTSBURG STEEL COMPANY,
*Plaintiff in Error,*

*vs.*

BALTIMORE EQUITABLE SOCIETY,
*Defendant in Error.*

## Brief on Behalf of Baltimore Equitable Society, Defendant in Error.

STATEMENT.

The case comes before this Court upon writ of error to the Court of Appeals of Maryland.

Briefly the history of the case is as follows:

On February 26, 1908, the Pittsburg Steel Company, plaintiff in error here, sued the Baltimore Equitable Society, here defendant in error, in the Superior Court of Baltimore City (a Court of law), the basis of the plaintiff's claim being

that it was a creditor of the South Baltimore Steel Car and Foundry Company, a corporation for which receivers had been, at the time of the institution of this suit, appointed by the Circuit Court of the United States for the District of Maryland, the defendant being and having been, it is alleged, a holder of stock of the insolvent South Baltimore Steel Car and Foundry Company, during all of the period in which the plaintiff was a creditor. It is further alleged that the said Baltimore Equitable Society had never paid for the stock held by it the full par value thereof; that, therefore, (under Section 64 of Article 23 of the Code of Public General Laws of Maryland of 1888, in force at the time of the institution of this suit), the defendant stockholder was liable to the plaintiff creditor in an amount equal to the unpaid balance of the stockholder's subscription to the capital stock of the South Baltimore Steel Car and Foundry Company (Record, pages 1, 2 and 3).

Said Section 64 is as follows:

64. All the stockholders of any such corporation shall be severally and individually liable to the creditors of the corporation of which they are stockholders, to an amount equal to the amount of stock held by them respectively, for all debts and contracts made by the corporation, until the whole amount of the capital stock fixed and limited by the corporation shall have been paid in, and a certificate thereof made and filed, as prescribed in the following section, which certificate may, however, be filed at any time after thirty days, mentioned in said section; but no stockholder shall be individually liable to the creditors of such corporation, except to the amount of his, her or their unpaid subscription to the capital stock; and the capital stock so fixed and limited shall be paid in, one-fourth thereof in one year, one-fourth in two years, one-fourth in three years, and one-fourth, or the balance, in four years from and after the incorporation of said company, or such corporation may be dissolved; provided, however, that it shall be lawful for the

trustees, directors or managers of any such corporation to collect and enforce payment of all subscriptions to the capital stock, as other debts are collected after notice being given, as required by Section 70 of this article, and if suit shall be brought by the trustees, directors or managers of any such corporation against all delinquent stockholders for the full amount of unpaid subscriptions within four years from the incorporation of said company, such corporation shall not be dissolved; and provided, furthermore, that the provisions of this section shall not apply to any homestead or building association.

(For purposes of identification and convenience, the Pittsburg Steel Company will be designated the "plaintiff," the Baltimore Equitable Society, the "defendant," and the South Baltimore Steel Car and Foundry Company, the "company," following the designations given by Judge Rose, of the Circuit Court of the United States for the District of Maryland, in a similar case, Republic Iron & Steel Co. vs. Carlton, *post.*)

The declaration in this case was filed on February 26, 1908 and the defendant subsequently filed pleas to the first six counts of the declaration and a demurrer to the seventh count. Shortly thereafter, the Legislature of Maryland passed a law regulating the method of procedure in cases of stockholders' liability. This Act took effect April 6, 1908 and it provided in future cases the liability of the stockholders should only be enforced by the receiver, assignee, or trustee, of the corporation. It also provided that the exclusive remedy for the enforcement by creditors against stockholders of all rights existing at the time of the passage of the Act, should be by bill in equity in the nature of a creditor's bill filed by one or more creditors on behalf of themselves and all other creditors, who may become parties thereto. The Act in force is as follows, 64-A being the one directly involved in this case:

"An act to appeal Section 64 of Article 23 of the Code of Public General Laws of Maryland of 1888, title 'Corporations,' and to re-enact the same with amendments, and to add to said article an additional section, to follow immediately after Section 64 of said Article, to be known as Section 64A of said Article, relating to the liability of stockholders to creditors of corporations.

Section 1. Be it enacted by the General Assembly of Maryland, that Section 64 of Article 23 of the Code of Public General Laws, title "Corporations," be and the same is hereby repealed and re-enacted with amendments, and that a new section be and is hereby added to said Article 23, to follow immediately after said Section 64 of said Article, and to appear therein as Section 64A, said Section 64, as amended and re-enacted, and said additional Section 64A to read as follows:

64. All the stockholders of any such corporation shall be severally and individually liable to the creditors of the corporation of which they are stockholders to an amount equal to the amount of stock held by them respectively, for all debts and contracts made by the corporation, until the whole amount of the capital stock fixed and limited by the corporation shall have been paid in, and a certificate thereof made and filed as prescribed in the following section, which certificate may, however, be filed at any time after thirty days mentioned in said section, but no stockholder shall be individually liable to the creditors of such corporation except to the amount of his, her or their unpaid subscriptions to the capital stock; and the liability of such stockholder shall be an asset of the corporation for the benefit ratably of all the creditors of such corporation, if necessary, to pay the debts of such corporation, and shall be enforceable only by appropriate proceedings by such corporation or by a receiver, assignee or trustee of such corporation, acting under the orders of a court of competent jurisdiction; provided, how-

ever, that this section shall not affect the rights of any creditor under the existing laws of this state against the stockholders who were liable to such creditors at the date of the passage of this Act ; and provided further, that nothing in this section shall be considered as a construction by the Legislature of the law hereby amended, and the capital stock so fixed and limited shall be paid in, one-fourth thereof in one year, one-fourth in two years, one-fourth in three years and one-fourth or the balance, in four years from and after the incorporation of said company, or such corporation may be dissolved ; provided, however, that it shall be lawful for the trustees, directors or managers of any such corporation to collect and enforce the payment of all subscriptions to the capital stock as other debts are collected, after notice being given, as required by Section 70 of this Article ; and if suit shall be brought by the trustees, directors or managers of any such corporation against all delinquent stockholders for the full amount of unpaid subscriptions within four years from the incorporation of said company, such corporation shall not be dissolved ; and provided furthermore, that the provisions of this section shall not apply to any homestead or building association.

64 A. The exclusive remedy for the enforcement by creditors against stockholders of all rights existing under the preceding Section 64, as the same stood prior to the time of the passage of this Act, and which were declared by said section as amended by this Act not to be affected by the terms thereof as herein amended, shall be, as against stockholders residing in the State of Maryland, by bill in equity in the nature of a creditor's bill filed against such stockholders by one or more creditors on behalf of themselves and all other creditors of the corporation who may come in and make themselves parties thereto, in a Court having jurisdiction within the limits of the county or city of Baltimore, in which, as the case may be, the principal office of the corpo-

ration is situated at the time of the filing of the bill, or in case any such corporation has, by reason of having been placed in the hands of a receiver, or from any other cause, ceased to have any principal office at the time of the filing of the bill, then the bill shall be filed in a Court having jurisdiction within the limits of the county or the city of Baltimore in which, as the case may be, the said corporation had its last principal place of business; and to any such bill stockholders residing beyond the limits of the State of Maryland may become parties defendant, and upon so becoming parties shall not be proceeded against in any other State or Territory or in the District of Columbia, in respect of any liability imposed by the said Section 64, as said section stood before the repeal thereof, and which existed at the time of the passage of this Act hereinbefore referred to. This section shall become operative as of July 1, 1907, and shall cause the abatement of all actions at law which shall have been brought against said stockholders since that date to enforce any liability created by Section 64, as said section stood before the repeal thereof, and which existed at the time of the passage of this Act hereinbefore referred to; provided, however, that as to any plaintiff or plaintiffs in any of said abated suits, who shall, within sixty days from the passage of this Act, become a party or parties to a bill in equity of the character mentioned in this section, then, as regards the operation of the Statute of Limitations upon the claims so sued on, the time elapsed between the institution of said abated suits and the time of such plaintiff or plaintiffs becoming a party or parties to said bill in equity shall be included in ascertaining the period within which suits are required to be brought by the said Statute of Limitations, the costs taxable to any plaintiff or plaintiffs in any action at law which shall be abated under the provisions of this section, the plaintiff or plaintiffs in which action shall become a party or parties to a bill in equity under the pro-

visions of this section, shall become a part of the costs taxable in the proceedings in said equity case.

Sec. 2. *And be it enacted*, That this act shall take effect from the date of its passsage."

Approved April 6. 1908.

As the above Act expressly provided that all pending actions at law should abate, the defendant in this case accordingly, on September 15, 1909, filed a motion to abate and dismiss the present suit (Record, page 8.) It will be noted that the above Act, by its express terms, abated all actions at law filed subsequent to July 1, 1907, and as the present case was filed February 26, 1908, long subsequent to the date mentioned, it came clearly within its terms. One of the grounds on which the plaintiff resisted the motion to abate was that the Act of 1908 mentioned above was unconstitutional. This, however, was decided adversely to the plaintiff by the presiding judge of the Superior Court of Baltimore City.

The plaintiff then entered an appeal to the Court of Appeals of the State of Maryland. The latter Court affirmed the judgment of the lower Court. Its opinion is found in the record at pages 6-7-8-9-10. But for the petition and allowance of the writ of error, the decision of the Court of Appeals of Maryland would have been a final determination of the plaintiff's stit.

## ARGUMENT.

### The Assignment of Errors.

The grounds of error assigned by the plaintiff are (Record, pages 12-13):

1. The Court of Appeals of the State of Maryland erred in affirming the judgment of the Superior Court of Baltimore City, State of Maryland.

2. The Court of Appeals of the State of Maryland erred in failing and refusing to reverse the judgment of the Superior Court of Baltimore City, State of Maryland.

3. The Court of Appeals of the State of Maryland erred in holding and deciding that Chapter 305 of the laws of the State of Maryland, passed at the General Assembly of 1908, does not violate Section 10, Article 1 of the Federal Constitution, which provides that no State shall pass any law impairing the obligations of contracts.

4. The Court of Appeals of Maryland erred in holding and deciding that Chapter 305 of the laws of the State of Maryland, passed at the General Assembly of 1908, does not impair the contractual rights of the Pittsburg Steel Company, a body corporate, the plaintiff in error, against the Baltimore Equitable Society, a body corporate, defendant in error.

"*Only one Real Assignment of Error to be Discussed.*"

The basis of the decision of the Superior Court of Baltimore City, as well as that of the Court of Appeals of Maryland, was the holding and deciding that Chapter 305 of the laws of Maryland passed at the General Assembly of 1908, in its applicability to the plaintiff in this case, was and is constitutional. The fourth assignment of error, therefore, must cover the plaintiff's entire case, it being too well established to admit of argument, that he cannot complain of the unconstitutionality of a statute if he is not damaged by its passage and the operation of the terms thereof.

American and English Encyclopedia, Volume 6, page 1090.

8 "Cyc." 787-8.

Cooley, "Constitutional Limitations," 7th Edition, page 232, and cases cited.

Lampasas vs. Bell, 180 U. S. 283-4.

Red River Valley Bank vs. Craig, 181 U. S. 558

Clark vs. Kansas City, 176 U. S. 114.
Albany County Supervisors vs. Stanley, 105 U. S. 305.
Brown vs. Ohio Valley Ry. Co., 79 Fed. Rep. 176.

*An Analysis of the Old Law and the New, with Respect to the Liability of Stockholders.*

An examination of the two statutes quoted in the opening statement will show that the Act of 1908, which is now attacked, modified the existing law of the State of Maryland merely by making a suit in equity against stockholders residing in the State the exclusive remedy for the enforcement by the creditors of a corporation of their right to hold such stockholders liable for the payment of whatever balance might be found to be due on their subscriptions to the capital stock of the corporation. Under the law as it existed at the time of the institution of this suit, a creditor had a right, in common with other creditors, to look to the stockholders of the corporation for the payment of whatever balance might be due on the subscription to the capital stock of the corporation. The creditor could sue any one or more of the stockholders for all debts and contracts made by the corporation until the whole amount of the capital stock fixed and limited by the corporation had been paid in, and a certificate thereof filed, but no stockholder could be held liable to the creditors of the corporation, or to anyone else, for more than the amount of his unpaid subscription to the capital stock.

Section 64 of Article 23, of the Code of 1888, was silent as to the method of procedure. It had been held by the Court of Appeals of Maryland that equity could be invoked to enforce the payment of stockholders' liability; it is true also that resort could be had to the institution, by creditors, of separate actions at law against delinquent stockholders.

The section was most indefinite in that respect. Thus, there was no limit to the number of suits that any individual stockholder might be called upon to defend, concurrently or otherwise, nor was there any limit to the number which the creditor might be forced to institute before obtaining satisfaction of his claim.

The Act of 1908 sought to change this uncertainty of action, and to substitute for the existing remedy or remedies, none of which were definitely fixed by statute, one simple, efficacious, inexpensive and speedy method of proceeding, in the form of a bill of equity against all stockholders, for the benefit of all creditors.

The motives of the Legislature in passing this Act of 1908, need not be inquired into; indeed, wherever such inquiry has been suggested, the Courts have invariably refused to act on the suggestion.

> Cooley, "Constitutional Limitations," 7th edition, page 258.

"We are not at liberty to inquire into the motives of the Legislature. We can only examine into its power under the Constitution."

> *Ex parte* McCardle, 7 Wallace 506, 514.

The sole question at issue, then, is, did the Act of 1908 impair any obligation of the defendant to the plaintiff arising under any contract, express or implied, between them, by reason of the ownership by the defendant of stock of the company, for which, he admits by the pleadings, he did not pay the full par value?

*What Was the Contract, if Any, Existing Between the Parties?*

We have no longer any doubt that the liability of the stockholder to the creditor for his unpaid subscription is a

liability founded originally on contract—a direct contract with the corporation, and passing through it to the creditor. It is equally true that the obligation of the stockholder's contract was his obligation to pay the balance of his unpaid subscription, and so soon as he paid that to the creditor or to some one for his benefit, or even to another creditor, he performed fully all that could possibly be required of him under that contract. That has been the settled law of the State of Maryland since 1875, when the case of Garling vs. Baechtel, 41 Md, 305, was decided. This case is cited with approval in every similar case down to and including the decision of this case by the Court of Appeals of Maryland. In the Garling case it was decided, upon construction of the statute imposing this liability upon stockholders, that the stockholder, in accounting to one creditor, was entitled to deduct any sums he had been compelled to pay as stockholder to other creditors of the company, and the amount or amounts of such judgments as they might have obtained against him. The best that could be said for the obligation of the stockholder's contract with an individual creditor was, that if the creditor reduced his claim to judgment, then he could collect to the extent of the stockholder's unpaid subscription, but if the stockholder first paid the receiver of the corporation, or another creditor, *before judgment rendered* in favor of the first creditor, then the right of the first creditor to recover was defeated.

Emmert vs. Smith, 40 Md. 129.
Straus vs. Heiss, 48 Md. 292.

The stockholder could even confess judgment in favor of any creditor he chose to select,

Republic Iron & Steel Co. vs. Carlton, 189 Fed. Rep. 126,

and this, we submit under the decisions from that in the case of Garling vs. Baechtel, *supra*, even after the institution of suit by another creditor, if before judgment.

Thus, the rights which the creditor obtained when he was allowed to institute an individual action against a stockholder were rather precarious. In commenting thereon, the Court of Appeals, in its opinion in the case at bar, said:

> "It is conceded that before the passage of the Act, any creditor could sue at law any stockholder who was such at the time the debt was contracted and recover from him to the extent of the balance due on his stock subscription or he could enforce his claim by a bill in equity.
>
> Norris vs. Johnson, 34 Md. 489.
> Crawford vs. Rohrer, 50 Md. 605.
>
> "The right of the creditor to thus sue at law was not a separate or exclusive one of his own which could be satisfied only by payment to him individually. It was a mere right held by him in common with all other creditors of the corporation to whom the stockholder was liable, and one which the stockholder could satisfy and destroy by payment to any other or others of such creditors. The right, therefore, of the creditor, under such circumstances, to bring a separate suit at law for an obligation which the debtor might satisfy by payment to a stranger to the suit, was not a very valuable right. It was a certain sense an individual right of action, but it bore only a slight resemblance to the right of a creditor to maintain a suit against his own debtor, to recover an obligation due to no one else than himself."

The Record, at page 2, discloses that the plaintiff in this case became a creditor of the company in August, 1907. Thus, at that time, as well as at the time of the institution of this suit, the law as it then stood, recognized the contractual obligation on the part of the stockholder to pay his unpaid subscription, but he could pay it to one of many

creditors or to the corporation or its receiver; and while the creditor had the right to sue the stockholder at law individually, the benefit of that right could be defeated by the happening of any one of several contingencies.

See Republic Iron & Steel Co. vs. Carlton, *supra.*

It has been held by this Court in the case of Seibert vs. Lewis, 122 U. S. 284, and in many other cases, that "the remedy subsisting in a State when and where the contract is made, and is to be performed, is a part of its obligation," but the construction given by the highest Court of the State to the statute at and before the contract was made determines the meaning of the contract. Sauer vs. New York, 206 U. S. 549. In the case at bar, the plaintiff did not become a creditor until 1907. The exact question involved in this case was passed upon in the case of *Republic Iron and Steel Co. vs. Carlton,* 189 Fed. Rep. 126. This was a suit under the same statute involved here by a creditor of the same company and against the stockholder of the same company involved in this case. The language of Judge Rose of the Circuit Court of the United States for the District of Maryland, in his opinion in that case, in deciding as it did that the very statute whose validity is here questioned (the Act of 1908) was constitutional, fits exactly the facts in this case. After citing the case of Sauer vs. New York, *supra,* the Court said:

> "This rule of law is decisive of the case now under consideration. The plaintiff did not become a creditor of the company until July 18, 1907. On November 30, 1904, the Court of Appeals of Maryland handed down its opinion fn the case of the Miners & Merchants Bank of Lonaconing vs. Snyder, 100 Md. 57. In 1903 the City Trust & Banking Company, a Maryland corporation, became insolvent. The Miners & Merchants Bank of Lonaconing was a creditor of the broken company. It sued Snyder, who was a stockholder in that com-

pany, to enforce against him for its benefit the liability imposed on him by statute. Before judgment was secured the Legislature of Maryland declared that the exclusive remedy of creditors to enforce the statutory liability of stockholders in a trust company should be by a bill in equity on behalf of all the creditors against all the stockholders. It further directed that all pending actions at law against such stockholders should be abated. The Court held that such act was valid and that the suit of the Miners & Merchants Bank abated.

"* * * The liability sought to be enforced in the last above mentioned case was a liability exclusively to creditors. It was one which could not have been defeated by payment to the corporation or to its receiver.

"Nevertheless, the Court held that in Maryland the implied power was reserved to the Legislature so to alter the contract made by such a statute as to take from a creditor the right to sue at law for his own benefit, and to require it to unite with all the other creditors in a proceeding in equity against all the stockholders.

"When the plaintiff in this case sold the merchandise to the company, for the price of which it is now suing, it did so knowing that in Maryland the contract created by statute between it and the defendant had the meaning given nearly three years before to a similar contract by the highest Court of the State."

The above language is applicable so precisely to the position of the plaintiff here, that further comment on the case quoted is unnecessary.

*Has the Contract Been Impaired?*

The change made in the law by the passage of the Act of 1908, was a change affecting only the remedy which the

plaintiff had under its so-called contract, but not affecting his rights thereunder.

It is well settled that there can be no vested right to a particular remedy.

Cooley, "Constitutional Limitations," page 515.
Sturges vs. Crowninshield, 4 Wheat. 122, 200.

Nor can there be any doubt but that a State can modify, change, enlarge or repeal an existing remedy, provided that it does not thereby impair substantial rights. In support of the doctrine that whatever belongs merely to the remedy may be altered at the will of the State, it is hardly necessary to cite more than a few of the long line of decisions of this Court.

Sturges vs. Crowninshield, *supra.*
Tennessee vs. Sneed, 96 U. S. 69.
Bronson vs. Kinzie, 1 How. 315.
Fourth National Bank vs. Francklyn, 120 U. S. 747.
Hill vs. Merchants' Insurance Company, 134 U. S 515.
Bernheimer vs. Converse, 206 U. S. 516.
Henley vs. Myers 215 U. S. 373.

In Seibert vs. Lewis, 122 U. S. 284, in quoting the case of Von Hoffman vs. Quincy, 71 U. S. 46 Wallace, 535, 553, this Court said :

> "It is competent for the State to change the form of the remedy, or to modify it otherwise as they see fit, provided no substantial right secured by the contract is thereby impaired."

In order to defeat the validity of Chapter 305 of the laws of 1908, the plaintiff must, first, overcome the presumption in favor of the constitutionality of that statute ; he must

then show that the statute comes within the well recognized class of statutes which, under pretence of modifying or regulating the remedy only, take away or impair the right itself.

*Presumption in Favor of Constitutionality of the Act in Question.*

Since the decision of the leading case of Fletcher vs. Peck, 6 Cranch, 87, 128, there can be no question but that there is a strong presumption in favor of the constitutionality of a statute. In that case, this Court, per Chief Justice Marshall, said :

> "The question whether a law be void for its repugnancy to the Constitution, is at all times, a question of much delicacy, which ought seldom, if ever, to be decided in the affirmative in a doubtful case. The Court, when impelled by duty to render such a judgment, would be unworthy of its station, could it be unmindful of the solemn obligations which that station imposes. But it is not on slight implication and vague conjecture that the Legislature is to be pronounced to have transcended its powers, and its acts to be considered as void. The opposition between the constitution and the law should be such that the judge feels a clear and strong conviction of their incompatibility with each other."

In delivering the above, the distinguished Chief Justice had especial reference to a conflict between a State statute and a State constitution; in many subsequent decisions, however, this Court has applied the doctrine as above stated to cases of conflict between State laws and the Federal Constitution.

*Ex parte* Garland, 71 U. S.; 4 Wall. 333, 382.
Pine Grove Township vs. Talcott, 86 U. S., 19 Wall. 666, 674.
Railroad Co. vs. Matthews, 174 U. S. 96.

And, while the decision of the Court of Appeals of Maryland in holding the statute, which is attacked in this case, constitutional is not binding on this Court, we respectfully submit that it should serve at least to strengthen the presumption in favor of the constitutionality of that statute.

*Does Chapter 305 of the Laws of Maryland so change the existing remedy for the enforcement of the plaintiff's contract as to impair the obligation thereof?*

We are unable to see wherein the statute is anything more than what it purports to be, *i. e.*, a change in the *form* of remedy, substituting for a variety of remedies, none of which were named or defined by the former law, the simple method of proceeding by a bill in equity on behalf of all creditors against all stockholders. It did, it is true, provide that all suits at law brought after July 1, 1907, a period of about eight months prior to its passage, should abate, but it saved the rights of the plaintiffs in the abated suits, and gave such plaintiffs the right to have their costs taxed as a part of the costs of the general equity proceeding. This retroactive aspect of the statute will be more fully discussed later.

"Statutes pertaining to the remedy are merely such as relate to the course and form of proceedings, but do not affect the substance of a judgment when pronounced."

Morton vs. Valentine, 15 La. Ann. 150.

There is nothing in the act that in any manner exceeds the limitations imposed by the definition of a remedial statute. The equity proceeding is substituted for all others, but that substitution, in itself, could have no effect on the judgment when pronounced. The stockholder, under the new proceedings, is always liable for as much as he was under the old law; in fact, he might be called upon to pay more. The equity proceeding is not burdensome or expensive to the creditor, it being borne in mind that the latter is not paid his judgment therein through the sometimes expen-

sive medium of a receivership, but through an independent equity proceeding instituted and conducted by the creditors of the corporation, and for their sole benefit. Nor, as in the cases wherein somewhat similar statutes have been passed upon, are there any onerous restrictions imposed upon the creditor before he can obtain satisfaction of his claim.

It may be argued that where all creditors are forced to come into a general equity case, for the benefit of all who so come in, some one or more creditors may not secure payment of all of his or their claim. Such an argument would apply equally in the case of an individual action at law, it having been shown in how many ways the claim of any particular creditor against any solvent stockholder can be defeated. Then, too, a case can easily be imagined, where the total liability of all the stockholders for unpaid subscriptions would exceed the debts of the corporation; thus, under the equity proceeding, all creditors would be paid in full. It is just as reasonable to say that creditors lose no more by the new remedy than by any of those employed under the old law, though it was true that, in some instances, the creditor who won the "race of diligence," as it has been termed, *might* profit by a suit at law.

Complaint has been made by the plaintiff in the case at bar that nothing has been given in place of what has been taken away by the new law. While this is true in a certain sense, it must be remembered that the new law left one of the remedies which had come into existence under the old law, and that one is adequate and equally efficacious. It was not necessary that a *new* remedy be supplied in place of that which was taken away. The State "may abolish one class of Courts and create another. It may give a new and additional remedy for a right or equity already in existence. And it may abolish old remedies and substitute new; or even without substituting any, if a reasonable remedy remains."

Cooley "Constitutional Limitations," 7th ed., page 516, citing the following cases:

Stocking vs. Hunt, 3 Denio 274.
Van Rensselaer vs. Read, 26 N. Y., 558.
Lennon vs. N. Y., 55 N. Y., 361.
Parker vs. Shannohouse, 1 Phil. (N. C.) 209.

"An existing remedy may be modified and the modified remedy made applicable to existing rights."

Phelps' Appeal, 98 Pa. St. 546.

"If a particular form of proceeding is prohibited, and another is left or provided which affords an effective and reasonable mode of enforcing the right, the obligation of the contract is not impaired."

Bronson vs. Kinzie, 1 How. 311.
Huntzinger vs. Brock, 3 Grant Cas. 243.
Evans vs. Montgomery, 4 Watts & S. 218.
Read vs. Bank, 23 Me. 318.

"The rule seems to be that in modes of proceeding and of forms to enforce the contract the Legislature has the control, and may enlarge, limit or alter them, provided that it does not deny a remedy, or so embarrass it with conditions as seriously to impair the value of the right. Bronson vs. Kinzie, *supra.*"

Tennessee vs. Sneed, *supra.*

*Analysis of Cases Presenting Similar Questions to Those now Before the Court.*

General propositions of law may be selected from the opinions of this Court and of other Courts which might at first glance, seem decisive of the questions here presented. An examination of the facts of the cases in which these opinions were delivered, however, is fairly in order to deter-

mine the value of the broad doctrines stated therein as applied to the case at bar.

To quote again from that portion of the opinion in the case of Von Hoffman vs. Quincey, 4 Wall. 535, 553, quoted in Seibert vs. Lewis, 122 U. S. 294:

> "* * * No attempt has been made to fix definitely the line between alterations of the remedy which are deemed to be legitimate, and those which, under the form of modifying the remedy, impair substantial rights. Every case must be determined upon its own circumstances."

Bearing this in mind, we will consider the decisions in some of the cases interpreting the constitutional prohibition here complained of. The decisions of this Court will furnish most of the examples necessary or useful for proper consideration of the case at bar, and, with a few exceptions, we shall confine our attention to the cases passed upon by this tribunal.

In his brief filed in the Court of Appeals of Maryland, the plaintiff cited the following cases decided by the Supreme Court of the United States.

McCracken vs. Hayward, 2 How. 608.
Seibert vs. Lewis, 122 U. S. 284.
Edwards vs. Kearzey, 96 U. S. 595.
Bryan vs. Virginia, 135 U. S. 685.
Louisiana vs. New Orleans, 102 U. S. 203.
Walker vs. Whitehead, 83 U. S. 314.
White vs. Hart, 13 Wall. 646.
Gunn vs. Barry, 15 Wall. 610.
Green vs. Biddle, 8 Wheat. 1.
Memphis vs. U. S., 97 U. S. 293.
Barnitz vs. Beverly, 163 U. S. 118.
Ogden vs. Saunders, 12 Wheat. 213.
Ochiltree vs. Iowa Co., 21 Wall. 219.

As will be noted, these cases all deal with statutes entirely different from the one before the Court.

For example, in McCracken vs. Hayward, *supra*, the statute provided that a sale should not be made of property levied on under execution unless two-thirds of its value, according to the valuation of three householders, should be bid for such property.

In Seibert vs. Lewis, *supra*, the Missouri statute sought to deprive the holder of municipal bonds of the right guaranteed to them to collect his debt "in the same manner as county taxes" were levied. The importance of such a guarantee is obvious.

In Walker vs. Whitehead, *supra*, this Court passed on the validity of a Georgia statute whose effect was practically to nullify, by impeding the remedy, all debts made by Southern sympathizers prior to June 1, 1865. In holding the statute unconstitutional, this Court said:

> "A clearer case of a law impairing the obligation of contract, within the meaning of the Constitution can hardly occur."

In White vs. Hart, *supra*, the clause of the Georgia Constitution held unconstitutional, provided that no Court should have jurisdiction to enforce any debt the consideration of which was a slave. This provision clearly destroyed the right itself.

In Edwards vs. Kearzey, *supra*, and in Gunn vs. Barry, *supra*, as well as in other cases, this Court has declared that statutes which seek to increase the amount to which homesteads shall be exempt from execution are void as to existing creditors. It is perfectly apparent, however, that in the instances above cited, the statutes vitally affected the existing rights as well as remedies.

Another class of statutes which has been held unconstitutional is the class which attempt so to impede and embarrass

the remedy as to render the right practically valueless. This class is well illustrated by the case of Bryan vs. Virginia, *supra*.

By the statute passed upon in the case of Hathorne vs. Calef, 2 Wall. 10, the Legislature of Maine attempted to abolish altogether the right of the creditor to recover from the stockholder. Today, it would not be seriously argued that such a statute did not offend against the tenth section of Article 1 of the Constitution.

On the other hand, there have been many cases before this Court, in which the statutes attacked effected existing remedies to an extent far greater than does the one under consideration. This is also true of the decisions of the highest Courts of many of the States, but as those decisions are so numerous, and, in many instances, conflicting, it would be useless to do more than note a few of them, especially in view of the long established line of decisions of this Court. Then, too, it is submitted that were this Court to lean towards the decisions of any other State tribunal, it would naturally incline towards the established law of the State of Maryland, as declared by its Court of Appeals in the following cases:

Miners & Merchants Bank of Lonaconing vs. Snyder, 100 Md. 58.

Murphy vs. Wheatley, 100 Md. 358.

Pittsburg Steel Co. vs. Baltimore Equitable Society, 113 Md. 77.

Bettendorf Axle Co. vs. Field, 114 Md. 487.

Pittsburg Forge Co. vs. Safe Deposit Co., 116 Md. 697.

Among the most striking examples of changes of the form of remedy that do not impair the obligation of the contract, are the following cases:

Sturges vs. Crowninshield, 4 Wheat. 122.

Tennessee vs. Sneed, 96 U. S. 69.

Louisiana vs. New Orleans, 102 U. S. 203.
Penniman's Case, 103 U. S. 714.
Antoni vs. Greenhow, 107 U. S. 775.
Fourth Natl. Bank vs. Franklyn, 120 U. S. 747.
Hill vs. Merchants Insurance Co., 134 U. S. 527.
Wilson vs. Standefer, 184 U. S. 399.
Oshkosh Water Co. vs. Oshkosh, 187 U. S. 437.
Waggoner vs. Flack, 188 U. S. 595.
Bernheimer vs. Converse, 206 U. S. 516.
Henley vs. Myers, 215 U. S. 373.
Conkey vs. Hart, 14 N. Y. 23.
Kirkman vs. Bird, 58 L. R. A. 669.
Story vs. Furman, 25 N. Y. 214.
Cutts vs. Hardee, 38 Ga. 350.
Cook vs Gray, 2 Houst. 455.
Bird vs. Keller, 77 Me. 270.

In Sturges vs. Crowninshield, *supra*, the statute abolishing imprisonment for debt was held constitutional.

In Tennessee vs. Sneed, *supra*, the statute compelled taxpayers to pay their taxes under protest, and later have their rights determined, instead of allowing them to proceed by mandamus to compell the collector to accept payment in a certain way. Numerous formalities were interposed before the taxpayer could secure a refund of moneys illegally collected, but this Court held the statute valid. We quote from page 74: "If a particular form of proceeding is prohibited, and another is left, or is provided, which affords an effective and reasonable mode of enforcing the right, the obligation is not impaired."

Penniman's case, *supra*, affirmed the case of Sturges vs. Crowninshield, *supra*, and Mason vs. Haile, 12 Wheat. 370, in holding that the State could abolish imprisonment for debt. In Penniman's case, the old law had made the stockholder's person liable for all the existing debts of the com-

pany in the event of the failure of the corporation to file a certain certificate, and Penniman was actually in jail at the time of the passage of the Act, under the provisions of which he was released.

As the language used by this Court in the case of Fourth National Bank vs. Francklyn, cited above, presents so strong an argument in favor of the validity of the statute now in controversy we give here a portion of the opinion:

> "This statute permits the *alternative* remedy by suit in equity * * * and modifies the previous statutes in no other respect than by abolishing the right to take the person of the stockholder for the debt of the corporation. * * * As it does not undertake to *annul the liability* of the stockholders for the debt of the corporation, but only modifies the *form of remedy* and the rules of evidence, it is not doubted that it is a constitutional exercise of the power of the legislature, even as applied to debts contracted by the corporation before its enactment. Hawthorne vs. Calef, 69 U. S. 2 Wall. 10; Penniman's, 103 U. S. 714, affirming 11 R. I. 333; Ogden vs. Saunders, 25 U. S. 12 Wheat. 213, 262, 349; Webb vs. Den, 58 U. S. 17 How. 576; Curtis vs. Whitney, 80 U. S. 13 Wall. 68; Tennessee vs. Sneed, 96 U. S. 69." (The italics are ours.)

In Hill vs. Insurance Co., *supra*, it was held that the Legislature had the power to change the mode of enforcing stockholders' liability, by substituting for a general equity proceeding, proceedings against stockholders individually, by notice and motion in the action in which judgment was rendered against the corporation.

The similar cases of Wilson vs. Standefer and Waggoner vs. Flack, *supra*, decided by this Court in 1902 and 1903, respectively, furnish, perhaps, what is nearest to a definition of the line of demarcation between so-called remedial

statutes which impair contractural obligations and those which do not. In the latter case it is said (page 602):

> "It is true that the remedy for the enforcement of a contract sometimes enters into the contract itself, but that is where an endeavor has been made to so change the existing remedy that there is no effective and enforceable one left, or the remedy is so far impaired that the party desirous of enforcing the contract is left practically without any efficient means of doing so; but in the case of an alteration of a remedy, if one is left or provided which is fairly sufficient, the obligations of a contract are not impaired, although the remedies existing at the time it was entered into are taken away."

In Oshkosh Waterworks Co. vs. Oshkosh, *supra*, this Court held that a law requiring creditors of a municipality to present their claims to the common council, and in event of disallowance in sixty days, to file an appeal within twenty days, bond therein, to be approved by the city attorney and the comptroller, did not impair the obligation of the creditor's contract. The law existing at the time of the contract allowed the creditor to enter suit without restriction, except that it required him to file an affidavit, if required, with the council.

The case of Bernheimer vs. Converse, *supra*, presents a case in which this Court has allowed probably greater latitude in the change of remedy than in any of its decisions to date. Under the law, as it stood at the time of the Bernheimers' contract, they were liable for the debts of the Minnesota corporation, but, as non-residents of that State, there was no way of enforcing their liability. The law provided that no service of process need be had on stockholders, and made them liable also for the expenses incident to the enforcement of the liability in other States and against other parties. The Court held that the statute was—

> "Obviously an act intended to make effective the liability which is incurred by stockholders under the

> Constitution of the State, and it ought not to be rendered nugatory unless substantial objections exists against its enforcement. It operates equally upon all stockholders, at home and abroad, and *assesses all by a uniform rule.*"

The most recent adjudication by this Court of questions similar to those here presented, is in the case of Henley vs. Myers, 215 U. S. 373, decided January 3, 1910. In that case, the stockholders complained that legislation by the State of Kansas passed after they became stockholders impaired their contractual rights. The new law provided a certain method by which stock should be legally transferred, and also substituted for individual actions against delinquent stockholders a suit in equity. To the latter objection was made by stockholders, and this Court said (at page 385):

> "Equally without merit is the contention that the Statute of 1899 impaired the obligations of the stockholders' contract, in that it substituted for individual actions against them a suit in equity by a receiver appointed after judgment against the corporation. In becoming stockholders the defendants *did not acquire a vested right in any particular mode of procedure* adopted for the purpose of enforcing their liability as stockholders. It is a well established doctrine that mere methods of procedure in actions on contract that do not affect the substantial rights of parties are always within the control of the State. *It is to be assumed that parties make their contracts with reference to the existence of such power in the State.*" (The italics are ours.)

This case is so near the case at bar that we cannot but regard it as conclusive thereof. True, the objection of unconstitutionality was urged in the Henley Case by stockholders, and not by creditors, but we cannot see how the concluding sentence above quoted is to be interpreted as

meaning anything less than what it plainly and positively says. The creditor is as much a party to the contract as is the stockholder, and *vice versa*, and neither can be deprived of his rights under that contract.

As the Henley Case overrules all other interpretations of the Kansas statute in question—and there have been many by other Courts—it is unnecessary to comment on the decisions in those cases. The plaintiff in this case has relied largely on the decisions of the lower Federal Courts in the cases of Knickerbocker Trust Co. vs. Myers, 133 Fed. Rep. 764, and 139 Fed. Rep. 111 (on appeal), but we respectfully submit that the error of the decisions in those cases was, as pointed out by Judge Rose in the case of Republic Iron & Steel Co. vs. Carlton, *supra*, and by the Court of Appeals of Maryland in this case, founded on a misconception of the relations existing in Maryland between the creditors of a corporation and its stockholders.

This is clearly pointed out by the Court of Appeals of Maryland in its opinion in the present case (Record, page 9), where Judge Schmucker, referring to the Myers cases, uses the following language:

> "We have examined those cases and, yielding to the Courts by which they were decided the respect due to their high position and recognized ability, we are unable to accept as correct the conclusions at which they have arrived. In our judgment the learned authors of the opinions in those cases have overestimated the adequacy and value of the right, to sue the stockholder at law, enjoyed by the creditor before the passage of the Act.
>
> "Judge Archbold, in the opinion of the Circuit Court, when alluding to the race of diligence open to the creditors in their actions at law against the stockholder, uses the expression 'the first to sue being entitled to the whole until paid.' Judge Gray, in the

opinion in the Circuit Court of Appeals, speaks of the right of the creditor suing at law having become 'exclusive of every other creditor as to the particular defendant.'

"Neither the Act of 1904, Chap. 337, in issue in the Miners Bank case, nor the Act of 1908, Chap. 305, in issue here, give to the creditor suing the stockholder at law any lien or priority, by reason of having brought suit upon the debt due by the defendant stockholder to the corporation. Nor does the entry of suit by one creditor exclude the other creditors from suing the same stockholder and recovering the entire debt due by him if they can secure earlier judgments. It is the recovery of judgment not the entry of suit that gives to the suing creditor the exclusive right to the debt due by the defendant stockholder. In Garling vs. Bechtel, *supra*, it was held that the mere bringing of suit by one creditor against a stockholder does not constitute a defense to a suit by another creditor.

"The laws creating the liability of the stockholder, which were in force at the time of the passage of the Acts making the remedy in equity exclusive were silent as to the remedy. The practice of enforcing the liability by an action at law grew up under the decisions of this Court which held the liability to be a debt due under the same statute by the stockholder and therefore recoverable at law."

*Other Objections to Chapter 305 of the Laws of Marylanp of 1908 Urged by the Plaintiff.*

These objections can be easily and briefly disposed of. The first is on the question of limitations on the time within which the equity proceeding provided by the Act should be brought. That objection might have been applicable in the argument of the case before the Court of Appeals of Mary-

land, as that Court decided this case largely on the authority of the case of Bank vs. Snyder, *supra*, on which case we relied. The statute in the Snyder case was similar to the one in this case, except that it contained the word "excluded" instead of "included." Should the same objection be urged here, that some creditors might, by the restriction imposed by the word "included" lose their right of action, we feel that it is sufficient to say that the plaintiff was in no way injured by the effect of the word "included," and cannot, therefore, be heard to complain of any unconstitutionality in the statute on that ground.

There seems no doubt that the word "included" was used instead of the word "excluded" as the result of some clerical error. Giving, however, to the word "included" its full force and effect, it is only necessary to refer to the dates which appear in the record in this case to show conclusively that the plaintiff is in no event affected thereby. It appears on page 2 of the record that the plaintiff's claim was based on an indebtedness arising from the sale of merchandise in August and September, 1907, on sixty days credit. In Maryland, the Statute of Limitations permits the bringing of a suit of this kind at any time within three years. The Act, of which the plaintiff complains, became effective April 6, 1908, and therefore, even after the passage of that Act, the plaintiffs had at least two and a half years in which to bring such other proceedings as they might see proper before a defence of limitations could be available. In fact, even after the decision of the Court of Appeals of Maryland, which was rendered March 31, 1910, it was still open to the plaintiff to institute or intervene in an equity proceeding without the possibility of being confronted by the defence of limitations.

A Court will not listen to an objection made to the constitutionality of an act by a party whose rights it does not affect, and who has, therefore, no interest in defeating it."

Cooley, "Constitutional Limitations," 7th edition, page 232, citing the following:

People vs. R. R. Co., 15 Wend. 113.
Smith vs. Inge, 80 Ala. 283.
Clark vs. Kansas City, 176 U. S. 114.
Supervisors vs. Stanley, 105 U. S. 305.
Brown vs. R. R. Co., 79 Fed. Rep. 176.
R. R. Co. vs. Montgomery, 152 Ind. 1.
Sinclair vs. Jackson, 8 Cow. 543.

See also—

Oshkosh Waterworks Co. vs. Oshkosh, 187 U. S. 437.
Red River Valley Bank vs. Craig, 181 U. S. 558.
Commonwealth vs. Wright, 79 Ky. 22.
McKenny vs. State. 3 Wyoming, 716.
Marshall vs. Donovan, 10 Bush. 681.
6 Am. & Eng. Ency. of Law, 1090.
8 "Cyc.," 787-88.

The second minor objection urged by the plaintiff is that the statute abates all actions at law commenced since July 1, 1907, or in other words, that it is made applicable to all *pending* actions at law commenced since that date, of which the plaintiff's suit is one. If the statute is in other respects valid there is no authority for the proposition that because it applies to pending litigation it is to be held unconstitutional.

"If a statute providing a remedy is repealed while proceedings are pending, such proceedings will be thereby determined, unless the legislature shall otherwise provide; and if it be amended instead of repealed, the judgment pronounced in such proceedings must be according to the law as it then stands." Cites the following:

Rank vs. Dudley, 2 Pet. 492.
Ludlow vs. Johnson, 3 Ohio, 553.

Yeaton vs. United States, 6 Cranch, 281.
Schooner Rachel vs. United States, 6 Cranch, 329.
Wilson vs. Simon, 91 Md. 1.
Phelps' Appeal, 98 Pa. St. 546 and others.
See also—Penniman's Case, 103 U. S. 714, and the very recent case of Reiter vs. Harris, decided by this Court in February, 1812.

Then, too, the plaintiff is not damaged by the abatement of his suit *per se*, as his costs are saved by being taxed in the equity proceeding provided.

The plaintiff also makes the contention that the Act of 1908 does not govern his case, as it was repealed by the General Incorporation Law of 1908. It is unnecessary here to discuss that point, as it does not involve a constitutional question, and the highest Court of the State of Maryland has already passed upon it in this case (Record, pages 9-10).

*Conclusion.*

As we have indicated, under the most recent decisions of this Court, it is sufficient for the Legislature, in modifying existing remedies, to provide one "fairly sufficient" to enable the parties to enforce the obligations arising out of their contract. That the suit in equity provided by Chapter 308 of laws of Maryland of 1908, is more than fairly sufficient, there can be no doubt. It is certainly more equitable; in many instances it must be more efficient; it is not burdensome or expensive to creditors. We submit, therefore, that the judgment pronounced in this case by the Court of Appeals of the State of Maryland should be affirmed.

Respectfully submitted,

VERNON COOK,
WILTON SNOWDEN, JR.,
*Attorneys for Baltimore Equitable Society, Defendants in Error.*

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# Supreme Court of the United States

OCTOBER TERM, 1912.

*No 103.*

PITTSBURG STEEL COMPANY,
*Plaintiff in Error,*

*vs.*

BALTIMORE EQUITABLE SOCIETY,
*Defendant in Error.*

**Subject Index and Glossary of Cases Cited in Brief on Behalf of Baltimore Equitable Society, Defendant in Error.**

KING BROS., PRINTERS, 413 E. Lexington Street, Baltimore, Md.

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## INDEX.

A.

## GLOSSARY OF CASES CITED.

of a corporation against the stockholders, it will not declare the statute unconstitutional. And so *held* as to Chap. 305, Laws of Maryland of 1908.

One not hurt by a provision of an act cannot raise the question of its constitutionality on that ground.

113 Maryland, 77, affirmed.

THE facts, which involve the constitutionality of a statute of Maryland providing remedy for enforcing the liability of stockholders of corporations, are stated in the opinion.

*Mr. Edgar Allan Poe*, with whom *Mr. J. Kemp Bartlett*, *Mr. L. B. Keene Claggett* and *Mr. R. Howard Bland* were on the brief, for plaintiff in error:

Chapter 305 of the Acts of the General Assembly of Maryland of 1908, especially paragraph 64A thereof, impaired the obligation of the contract existing between the plaintiff in error and the defendant in error on the sixth day of April, 1908, the date when said act became effective, and is therefore unconstitutional, being in contravention of § 10 of Article I of the Constitution of the United States.

Prior to the passage of Chapter 305, a creditor of a Maryland corporation had the choice of two remedies against a stockholder whose subscription was unpaid in whole or in part; he could either proceed at law, as the plaintiff in error did in this case, or he could proceed by bill in equity in the nature of a creditor's bill. *Steel Company* v. *Equitable Society*, 113 Maryland, 81; *Mathews* v. *Albert*, 24 Maryland, 527; *Norris* v. *Johnson*, 34 Maryland, 485.

It is not a case of the substitution of one remedy for another, but of the entire elimination of the more valuable of one of two remedies.

This same act was upheld in *Republic Iron Co.* v. *Carlton*, 189 Fed. Rep. 126, but a practically similar act of

1904 was stricken down as unconstitutional in *Myers* v. *Knickerbocker Trust Co.*, 139 Fed. Rep. 111.

Any law which in its operation amounts to a denial or obstruction of the rights accruing by a contract, though professing to act only on the remedy, is directly obnoxious to the prohibition of the Constitution. *McCracken* v. *Hayward*, 2 How. 608 at 611; *Seibert* v. *Lewis*, 122 U. S. 284, 294.

Whatever legislation lessens the efficacy of a remedy impairs the obligation. *Louisiana* v. *New Orleans*, 102 U. S. 203, 206; *Bryan* v. *Virginia*, 135 U. S. 685, 693; *Edwards* v. *Kearzey*, 96 U. S. 595; *Rees* v. *City of Watertown*, 19 Wall. 107; *Dexter* v. *Edmonds*, 89 Fed. Rep. 467, 469; *Western Nat. Bank* v. *Reckless*, 96 Fed. Rep. 70.

Chapter 305 actually postpones and retards the enforcement of the contract, materially abridges the remedy for enforcing it, and fails to supply an alternative remedy equally adequate and efficacious.

The latter part of § 64A of Chapter 305, actually reduces the period of limitation as against all creditors who had brought suit against stockholders between the first day of July, 1907, and the sixth day of April, 1908. This provision is unconstitutional and vitiates the entire section.

*Mr. Wilton Snowden, Jr.*, and *Mr. Vernon Cook* for defendant in error.

MR. JUSTICE HOLMES delivered the opinion of the court.

This is an action brought by the plaintiff in error as a creditor of the South Baltimore Steel Car and Foundry Company to recover its claim from the defendant, a holder of stock in that company the subscription for which had not been fully paid. The action was begun on February 26, 1908, and at that date it could be maintained. But in April a statute was enacted (Act of April 6, 1908, c. 305,

Laws 1908, p. 58), making the stockholder's liability assets of the corporation, saving the rights of creditors at the date of the act, but providing that the exclusive remedy for such rights as against Maryland stockholders should be by bill in equity on behalf of such creditors as might come in. This provision was made operative as of July 1, 1907, and was to cause all actions at law of this kind brought since then to abate, saving the right to become party to a bill. On this statute the defendant moved to dismiss the suit. The motion was granted and the judgment was affirmed by the Court of Appeals, which sustained the constitutionality of the act as so applied. 113 Maryland, 77.

Of course the objection is that the law impairs the obligation of the plaintiff's contract. If the stockholder's liability were purely local and no more than matter of remedy for the collection of the principal debt, still this objection would have to be considered. See *Hawthorne* v. *Calef*, 2 Wall. 10. *Brown* v. *Eastern Slate Co.*, 134 Massachusetts, 590, 592. But the case was argued on the footing of a contract between the creditor and the stockholder, and as the statute seems to assume that the stockholder's liability may follow him into other jurisdictions and the Court of Appeals affirmed that a contract between the parties is presumed, we in turn assume that view to be correct. *Bernheimer* v. *Converse*, 206 U. S. 516, 529. In either view the question put in the form most favorable for the plaintiff is the same; whether the remedy against the defendant is impaired so materially as to affect the plaintiff's rights. *McGahey* v. *Virginia*, 135 U. S. 662, 693.

The plaintiff's supposed contract was subject to peculiar infirmities. His right was shared equally by all other creditors of the corporation, and not only might some other creditor by diligence have got in ahead of the plaintiff and have exhausted the fund for which the defendant could be held, but the right depended on the stockholder's

will. As was observed by Judge Rose, following the Maryland cases, in *Republic Iron & Steel Co.* v. *Carlton*, 189 Fed. Rep. 126, 137, the statute does no more than the stockholder was free to do before. He could have paid the corporation or a receiver or other creditors. The question whether the remedy on this contract was impaired materially is affected not only by the precarious character of the plaintiff's right, but by considerations of fact—of what the remedy amounted to in practice. It is admitted that bringing the action gave the plaintiff no lien, as it seems mistakenly to have been assumed to do in *Myers* v. *Knickerbocker Trust Co.*, 139 Fed. Rep. 111, 116. The Court of Appeals states that the remedy has been found in practice an uncertain one, less efficacious than that which is substituted. There is nothing to contradict their statement as to what experience has taught. With that fact before us and also the absolute dependence of the creditor upon the will of the stockholder, we cannot go into nice speculation as to the probable result of this particular case, or say that the decision was wrong. The power of the State to make similar changes of remedy is asserted in more general terms than we have employed, in *Fourth National Bank* v. *Francklyn*, 120 U. S. 747, 755. See also *Henley* v. *Myers*, 215 U. S. 373, 385.

A further objection is based upon the period of limitation established by the act. But as it does not appear that the plaintiff was hurt by it, this objection is not open. *Darnell* v. *Indiana*, *ante*, p. 390.

*Judgment affirmed.*

# PITTSBURG STEEL COMPANY *v.* BALTIMORE EQUITABLE SOCIETY.

ERROR TO THE COURT OF APPEALS OF THE STATE OF MARYLAND.

No. 103. Argued December 18, 19, 1912.—Decided January 6, 1913.

A state statute changing a remedy for enforcing contract rights does not impair the contract if it gives a more efficacious remedy than existed before or does not impair it so materially as to affect the creditor's rights.

Where, as in this case, this court cannot say that the state court was wrong in holding the new remedy under a state statute to be more efficacious than the former remedy for enforcing claims of creditors